



UNDERGROUND STORAGE TANK MAINTENANCE FEE LAW

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CODE OF FEDERAL REGULATIONS RELATING TO UNDERGROUND TANKS

CODE OF FEDERAL REGULATIONS 40 (CFR 40)

280.12. **Definitions (abridged).**

“Underground storage tank” or “UST” means any one or combination of tanks (including underground pipes connected thereto) that is used to contain an accumulation of regulated substances, and the volume of which (including the volume of underground pipes connected thereto) is 10 percent or more beneath the surface of the ground. This term does not include any:

(a) Farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes;

(b) Tank used for storing heating oil for consumptive use on the premises where stored;

(c) Septic tank;

(d) Pipeline facility (including gathering lines) regulated under:

(1) The Natural Gas Pipeline Safety Act of 1968 (49 U.S.C. App. 1671, *et seq.*), or

(2) The Hazardous Liquid Pipeline Safety Act of 1979 (49 U.S.C. App. 2001, *et seq.*), or

(3) Which is an intrastate pipeline facility regulated under state laws comparable to the provisions of the law referred to in paragraph (d)(1) or (d)(2) of this definition;

(e) Surface impoundment, pit, pond, or lagoon;

(f) Storm-water or wastewater collection system;

(g) Flow-through process tank;

(h) Liquid trap or associated gathering lines directly related to oil or gas production and gathering operations; or

(i) Storage tank situated in an underground area (such as a basement, cellar, mineworking, drift, shaft, or tunnel) if the storage tank is situated upon or above the surface of the floor. The term “underground storage tank” or “UST” does not include any pipes connected to any tank which is described in paragraphs (a) through (i) of this definition.

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UNDERGROUND STORAGE TANK MAINTENANCE FEE LAW

(Part 26, Division 2, Revenue and Taxation Code *)

Enacted Statutes 1989, Chapter 1442.

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|------------|-------------------------------------|--------------------|
| Chapter 1. | General Provisions and Definitions. | §§ 50101-50107. |
| 2. | The Underground Storage Tank Fee. | §§ 50108-50108.2. |
| 3. | Determinations. | §§ 50109-50120.3. |
| 4. | Collection of Fee. | §§ 50121-50138.7. |
| 5. | Overpayments and Refunds. | §§ 50139-50151. |
| 6. | Administration. | §§ 50152-50156.18. |
| 7. | Disposition of Proceeds. | §§ 50157-50158. |
| 8. | Disclosure of Information. | §§ 50159-50162. |

CHAPTER 1. GENERAL PROVISIONS AND DEFINITIONS

- | | |
|----------|--|
| § 50101. | Title. |
| § 50102. | Definitions. |
| § 50103. | Construction. |
| § 50104. | Provisions; construction. |
| § 50105. | Actions or proceedings prior to enactment. |
| § 50106. | "Board." |
| § 50107. | "Fee payer." |

50101. **Title.** This part shall be known and may be cited as the Underground Storage Tank Maintenance Fee Law.

50102. **Definitions.** The collection and administration of the fee specified in Section 50108 shall be governed by the definitions contained in Chapter 6.75 (commencing with Section 25299.10) of Division 20 of the Health and Safety Code, unless expressly superseded by the definitions contained in this part.

50103. **Construction.** Except where the context otherwise requires, the definitions contained in this chapter govern the construction of this part.

50104. **Provisions; construction.** The provisions of this part, insofar as they are substantially the same as existing provisions of law relating to the same subject matter, shall be construed as restatements and continuations and not as new enactments.

50105. **Actions or proceedings prior to enactment.** Any action or proceeding commenced before this part takes effect, or any right accrued, is not affected by this part, but these actions or proceedings shall conform to this part as far as possible.

50106. **"Board."** "Board" means the State Board of Equalization.

50107. **"Fee payer."** "Fee payer" means any person liable for the payment of a fee imposed by Section 25299.41 of the Health and Safety Code.

History.—Stats. 1990, Ch. 1366, in effect September 27, 1990, substituted "25299.41" for "25299.40".

* The provisions of this part, except as otherwise noted, become effective October 2, 1989.

UNDERGROUND STORAGE TANK
MAINTENANCE FEE LAW
Revenue and Taxation Code

CHAPTER 2. THE UNDERGROUND STORAGE TANK FEE

- Article 1. Imposition of Fee. § 50108.
2. Registration and Security. §§ 50108.1–50108.2.

Article 1. Imposition of Fee

- § 50108. Administration and collection of fee.

50108. Administration and collection of fee. The fee imposed pursuant to Section 25299.41 of the Health and Safety Code shall be administered and collected by the board in accordance with this part.

History.—Stats. 1990, Ch. 1366, in effect September 27, 1990, substituted “25299.41” for “25299.40”.

Article 2. Registration and Security

- § 50108.1. Registration.
§ 50108.2. Security.

50108.1. Registration. Every person who is an owner of an underground storage tank for which a permit is required pursuant to Section 25284 of the Health and Safety Code containing petroleum shall register with the board on forms provided by the board.

History.—Added by Stats. 1990, Ch. 1366, in effect September 27, 1990. Stats. 1995, Ch. 639, in effect January 1, 1996, substituted “an owner of . . . permit is required” for “required to have a permit to own or operate an underground storage tank” after “person who is”.

50108.2. Security. (a) The board, whenever it determines it to be necessary to ensure compliance with this part, may require any person subject to this part to place with it any security that the board determines to be reasonable, taking into account the circumstances of that person. Any security in the form of cash, government bonds, or insured deposits in banks or savings and loan institutions shall be held by the board in trust to be used solely in the manner provided by this section. The board may sell the security at a public auction if it becomes necessary to do so in order to recover any fee or any amount required to be collected, including any interest or penalty due.

(b) Notice of the sale authorized in subdivision (a) shall be served upon the person who placed the security personally or by mail. If service is made by mail, the notice shall be addressed to the person at his or her address as it appears in the records of the board. Service shall be made at least 30 days prior to the sale in the case of personal service, and at least 40 days prior to the sale in the case of service by mail. Upon any sale, any surplus above the amounts due shall be returned to the person who placed the security.

History.—Added by Stats. 1990, Ch. 1366, in effect September 27, 1990. Stats. 1991, Ch. 236, in effect July 29, 1991, added the second sentence in subdivision (a). Stats. 1994, Ch. 903, in effect January 1, 1995, deleted “Security in the form of a bearer bond issued by the United States or the State of California which has a prevailing market price may, however, be sold by the board at private sale at a price not lower than the prevailing market price.” as the third sentence in the second paragraph.

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CHAPTER 3. DETERMINATIONS

- Article 1. Reports and Payments. §§ 50109-50112.5.
1.1. Payment by Electronic Funds Transfer. §§ 50112.7-50112.10.
2. Determinations. §§ 50113-50113.2.
3. Redeterminations. §§ 50114-50120.
4. Jeopardy Determinations. §§ 50120.1-50120.3.

Article 1. Reports and Payments

- § 50109. Notice of determination. [Repealed.]
§ 50109. Quarterly returns.
§ 50110. Fee; due and payable. [Repealed.]
§ 50110. Returns; other than periods specified.
§ 50111. Penalty for late payment. [Repealed.]
§ 50111. Extension of time.
§ 50112. Excusable delay. [Repealed.]
§ 50112. Late payment penalty.
§ 50112.1. Interest. [Repealed.]
§ 50112.2. Reasonable cause for delay; penalty relief.
§ 50112.3. Relief from interest; disaster.
§ 50112.4. Relief of interest.
§ 50112.5. Reasonable Reliance on written advice: relief of tax, penalty and interest.

50109. Notice of determination. [Repealed by Stats. 1990, Ch. 1366, in effect September 27, 1990.]

50109. Quarterly returns. The fee collected under Section 50108 is due and payable to the board quarterly on or before the 25th day of the month following the end of each calendar quarter. Each fee payer, on or before the 25th day of the month following the quarterly period for which the fee is due, shall prepare a fee return for the preceding quarterly period, in the form as prescribed by the board, which may include, but not be limited to, electronic media showing the total number of gallons of petroleum placed into underground storage tanks which he or she owns during the period, the amount of the fee for the period covered by the return, and any other information that the board determines to be necessary. The fee payer shall deliver the return, together with a remittance of the amount of the fee due, to the office of the board on or before the 25th day of the month following the quarterly period for which the fee is due. Returns shall be authenticated in a form or pursuant to methods as may be prescribed by the board.

History.—Added by Stats. 1990, Ch. 1366, in effect September 27, 1990. Stats. 2002, Ch. 459 (AB 1936), in effect January 1, 2003, added “which may include, but not be limited to, electronic media” after “by the board,” in the second sentence, and added the fourth sentence.

50110. Fee; due and payable. [Repealed by Stats. 1990, Ch. 1366, in effect September 27, 1990.]

50110. Returns; other than periods specified. The board, if it determines it to be necessary in order to facilitate the administration of this part, may require returns and payments specified under Section 50109 to be made for periods other than quarterly.

History.—Added by Stats. 1990, Ch. 1366, in effect September 27, 1990.

50111. Penalty for late payment. [Repealed by Stats. 1990, Ch. 1366, in effect September 27, 1990.]

50111. Extension of time. (a) The board for a good cause may extend, for up to one month, the time period within which a person is required to submit a report or pay a sum of money under this part. The extension may be granted at any time if a request is filed with the board within, or prior to the commencement of, the period for which the extension may be granted.

(b) Any person to whom an extension is granted shall pay, in addition to the fee, interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee would have been due without the extension until the date of payment.

History.—Added by Stats. 1990, Ch. 1366, in effect September 27, 1990.

50112. Excusable delay. [Repealed by Stats. 1990, Ch. 1366, in effect September 27, 1990.]

50112. Penalties for late payment. (a) Any feepayer who fails to pay any fee to the state or any amount of fee required to be collected and paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 50113) within the time required shall pay a penalty of 10 percent of the amount of the fee, together with interest on that fee at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee became due and payable until the date of payment.

(b) Any feepayer who fails to file a return in accordance with the due date set forth in Section 50109 or the due date established by the board in accordance with Section 50110, shall pay a penalty of 10 percent of the amount of the fee with respect to the period for which the return is required.

(c) The penalties imposed by this section shall be limited to a maximum of 10 percent of the fee for which the return is required for any one return.

History.—Added by Stats. 1990, Ch. 1366, in effect September 27, 1990. Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, substituted "Any feepayer who fails to pay any fee . . . due and payable until the date of payment" for "If the fee is not paid to the board within the time prescribed for the payment of the fee, a penalty of 10 percent of the amount of the fee shall be added to the amount due" in subdivision (a); added subdivisions (b) and (c).

50112.1. Interest. [Repealed by Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001.]

50112.2. Reasonable cause for delay; penalty relief. (a) If the board finds that a person's failure to make a timely report or payment is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the penalties provided by Sections 50112, 50112.7, and 50119.

(b) Except as provided in subdivision (c), any person seeking to be relieved of the penalty shall file with the board a statement, under penalty of perjury, setting forth the facts upon which he or she bases his or her claim for relief.

(c) The board shall establish criteria that provide for efficient resolution of requests for relief pursuant to this section.

History.—Added by Stats. 1990, Ch. 1366, in effect September 27, 1990. Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, substituted “Sections 50112 and 50119” for “Section 50112” after “penalty provided by” in subdivision (a) and deleted “provided by Section 50112” after “of the penalty” in subdivision (b). Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, substituted “penalties” for “penalty” after “may be relieved of the” and added “50112.7” after “Sections 50112,” in subdivision (a); substituted “Except as provided in subdivision (c), any” for “Any” before “person seeking to be relieved” in subdivision (b); and added subdivision (c).

50112.3. Relief from interest; disaster. (a) If the board finds that a person’s failure to make a timely report or payment was due to a disaster, and occurred notwithstanding the exercise of ordinary care and the absence of willful neglect, the person may be relieved of the interest provided by Sections 50111, 50112, and 50112.7.

(b) Any person seeking to be relieved of the interest provided by Sections 50111, 50112, and 50112.7 shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

History.—Added by Stats. 1990, Ch. 1366, in effect September 27, 1990. Stats. 2000, Ch. 923 (AB 2984), in effect January 1, 2001, substituted “50112, and 50112.7” for “and 50112.1” after “interest provided by Sections” in subdivision (a); substituted “50111, 50112, and 50112.7” for “50111 and 50112.1” after “interest provided by Sections” in subdivision (b).

50112.4. Relief of interest. (a) The board, in its discretion, may relieve all or any part of the interest imposed on a person by this part where the failure to pay fees is due in whole or in part to an unreasonable error or delay by an employee of the board acting in his or her official capacity.

(b) For purposes of this section, an error or delay shall be deemed to have occurred only if no significant aspect of the error or delay is attributable to an act of, or a failure to act by, the feepayer.

(c) Any person seeking relief under this section shall file with the board a statement under penalty of perjury setting forth the facts on which the claim for relief is based and any other information which the board may require.

(d) The board may grant relief only for interest imposed on fee liabilities that arise during taxable periods commencing on or after January 1, 2000.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001, deleted “or” after “fee was not made timely” in subdivision (a); and substituted “feepayer” for “fee payer” after “or failure to act by,” in subdivision (b). Stats. 2001, Ch. 251 (AB 1123), substituted “this part” for “Section 50112.1 and . . . not made timely,” in subdivision (a), effective January 1, 2002.

50112.5. Reasonable reliance on written advice; relief of tax, penalty, and interest. (a) If the board finds that a person’s failure to make a timely report or payment is due to the person’s reasonable reliance on written advice from the board, the person may be relieved of the fees imposed or administered under this part and any penalty or interest added thereto.

(b) For purposes of this section, a person’s failure to make a timely report or payment shall be considered to be due to reasonable reliance on written advice from the board, only if the board finds that all of the following conditions are satisfied:

(1) The person requested in writing that the board advise him or her whether a particular activity or transaction is subject to the fee under this part. The specific facts and circumstances of the activity or transaction shall be fully described in the request.

(2) The board responded in writing to the person regarding the written request for advice, stating whether or not the described activity or transaction is subject to the fee, or stating the conditions under which the activity or transaction is subject to the fee.

(3) The liability for fees applied to a particular activity or transaction which occurred before either of the following:

(A) Before the board rescinded or modified the advice so given, by sending written notice to the person of the rescinded or modified advice.

(B) Before a change in statutory or constitutional law, a change in the board's regulations, or a final decision of a court, which renders the board's earlier written advice no longer valid.

(c) Any person seeking relief under this section shall file with the board all of the following:

(1) A copy of the person's written request to the board and a copy of the board's written advice.

(2) A statement under penalty of perjury setting forth the facts on which the claim for relief is based.

(3) Any other information which the board may require.

(d) Only the person making the written request shall be entitled to rely on the board's written advice to that person.

History.—Added by Stats. 1990, Ch. 987, in effect January 1, 1991.

Article 1.1. Payment by Electronic Funds Transfer *

§ 50112.7. Electronic funds transfer payments.

§ 50112.8. Relief of penalty.

§ 50112.9. Definitions.

§ 50112.10. Electronic filing.

50112.7. Electronic funds transfer payments. (a) Any person whose estimated fee liability under this part averages twenty thousand dollars (\$20,000) or more per month, as determined by the board pursuant to methods of calculation prescribed by the board, shall remit amounts due by an electronic funds transfer under procedures prescribed by the board.

(b) Any person whose estimated fee liability under this part averages less than twenty thousand dollars (\$20,000) per month may elect to remit amounts due by electronic funds transfer with the approval of the board.

(c) Any person remitting amounts due pursuant to subdivision (a) or (b) shall perform electronic funds transfer in compliance with the due dates set forth in Article 1 (commencing with Section 50109). Payment is deemed complete on the date the electronic funds transfer is initiated, if settlement to the state's demand account occurs on or before the banking day following the

* Stats. 2000, Ch. 923 (AB 2894), in effect January 1, 2001.

date the transfer is initiated. If settlement to the state's demand account does not occur on or before the banking day following the date the transfer is initiated, payment is deemed to occur on the date settlement occurs.

(d) Any person remitting fees by electronic funds transfer shall, on or before the due date of the remittance, file a return for the preceding reporting period in the form and manner prescribed by the board. Any person who fails to timely file the required return shall pay a penalty of 10 percent of the amount of fees, with respect to the period for which the return is required.

(e) Any person required to remit fees pursuant to this article who remits those fees by means other than appropriate electronic funds transfer shall pay a penalty of 10 percent of the fees incorrectly remitted.

(f) Any person who fails to pay any fee to the state or any amount of fee required to be paid to the state, except amounts of determinations made by the board under Article 2 (commencing with Section 50113) within the time required shall pay a penalty of 10 percent of the fee or amount of fee, in addition to the fee or amount of fee, plus interest at the modified adjusted rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date on which the fee or the amount of fee required to be paid became due and payable to the state until the date of payment.

(g) In determining whether a person's estimated fee liability averages twenty thousand dollars (\$20,000) or more per month, the board may consider returns filed pursuant to this part and any other information in the board's possession.

(h) The penalties imposed by subdivisions (d), (e), and (f) shall be limited to a maximum of 10 percent of the fees due for any one return. Any person remitting fees by electronic funds transfer shall be subject to the penalties under this section and not Section 50112.

(i) The board shall promulgate regulations pursuant to Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code for purposes of implementing this section.

History.—Stats. 2005, Ch. 519 (AB 1765), in effect October 4, 2005, operative January 1, 2006, deleted the former last sentence of subdivision (b) which provided "The election shall be operative for a minimum of one year."

50112.8. Relief of penalty. If the board finds that a person's failure to make payment by an appropriate electronic funds transfer in accordance with board procedures is due to reasonable cause and circumstances beyond the person's control, and occurred notwithstanding the exercise of ordinary care and in the absence of willful neglect, that person shall be relieved of the penalty provided in subdivision (e) of Section 50112.7. Any person seeking to be relieved of the penalty shall file with the board a statement under penalty of perjury setting forth the facts upon which he or she bases his or her claim for relief.

50112.9. Definitions. (a) "Electronic funds transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal,

telephonic instrument, or computer or magnetic tape, so as to order, instruct, or authorize a financial institution to debit or credit an account. Electronic funds transfers shall be accomplished by an automated clearinghouse debit, an automated clearinghouse credit, or by Federal Reserve Wire Transfer (Fedwire).

(b) “Automated clearinghouse” means any federal reserve bank, or an organization established in agreement with the National Automated Clearing House Association, that operates as a clearinghouse for transmitting or receiving entries between banks or bank accounts and which authorizes an electronic transfer of funds between these banks or bank accounts.

(c) “Automated clearinghouse debit” means a transaction in which the state, through its designated depository bank, originates an automated clearinghouse transaction debiting the person’s bank account and crediting the state’s bank account for the amount of the fee. Banking costs incurred for the automated clearinghouse debit transaction shall be paid by the state.

(d) “Automated clearinghouse credit” means an automated clearinghouse transaction in which the person through his or her own bank, originates an entry crediting the state’s bank account and debiting his or her own bank account. Banking costs incurred for the automated clearinghouse credit transaction charged to the state shall be paid by the person originating the credit.

(e) “Fedwire transfer” means any transaction originated by a person and utilizing the national electronic payment system to transfer funds through the federal reserve banks, when that person debits his or her own bank account and credits the state’s bank account. Electronic funds transfers pursuant to Section 50112.7 may be made by Fedwire only if payment cannot, for good cause, be made according to subdivision (a), and the use of Fedwire is preapproved by the board. Banking costs incurred for the Fedwire transaction charged to the person and to the state shall be paid by the person originating the transaction.

50112.10. **Electronic filing.** (a) Any return, declaration, statement, or other document required to be made under this part that is filed using electronic media shall be filed and authenticated pursuant to any method or form the board may prescribe.

(b) Notwithstanding any other law, any return, declaration, statement, or other document otherwise required to be signed that is filed by the taxpayer using electronic media in a form as required by the board shall be deemed to be a signed, valid original document, including upon reproduction to paper form by the board.

(c) Electronic media includes, but is not limited to, computer modem, magnetic media, optical disk, facsimile machine, or telephone.

Article 2. Deficiency Determinations

- § 50113. Deficiency determination; service of notice.
§ 50113.1. Limitations; deficiency determinations.
§ 50113.2. Waiver.

50113. Deficiency determination; service of notice. (a) If the board is dissatisfied with the report filed or the amount of fee paid to the board under this part by any fee payer, or if no report has been filed or no payment or payments of the fees have been made to the state by a fee payer, the board may compute and determine the amount to be paid, based upon any information available to it. One or more additional determinations may be made of the amount of fee due for one, or for more than one, period. The amount of fee so determined shall bear interest at the modified rate per month, or fraction thereof, established pursuant to Section 6591.5, from the date the amount of the fee, or any portion thereof, became due and payable until the date of payment. In making a determination, the board may offset overpayments for a period or periods against underpayments for another period or periods and against the interest and penalties on the underpayments.

(b) If any part of the deficiency for which a determination of an additional amount due is made is found to have been occasioned by negligence or intentional disregard of this part or regulations adopted by the board pursuant to this part, a penalty of 10 percent of the amount of that determination shall be added, plus interest as provided in subdivision (a).

(c) If any part of the deficiency for which a determination of an additional amount due is made is found to be occasioned by fraud or an intent to evade this part or regulations adopted pursuant to this part, a penalty of 25 percent of the amount of the determination shall be added, plus interest as provided in subdivision (a).

(d) The board shall give to the fee payer written notice of its determination. The notice shall be placed in a sealed envelope, with postage paid, addressed to the fee payer at the fee payer's address as it appears in the records of the board. The giving of the notice shall be deemed complete at the time of the deposit in a United States Post Office, or a mailbox, subpost office, substation, mail chute, or other facility regularly maintained or provided by the United States Postal Service, without extension of time for any reason. In lieu of mailing, the board may serve notice personally by delivering to the person to be served, and service shall be deemed complete at the time of delivery. The board may make personal service to a corporation by delivering a notice to any person designated in the Code of Civil Procedure to be served for the corporation with a summons and complaint in a civil action.

History.—Stats. 1990, Ch. 1366, in effect September 27, 1990, added subdivision (a), (b), and (c) and “(d)” before “The board shall give”.

50113.1. Limitations; deficiency determinations. Except in the case of fraud, intent to evade this part, or rules and regulations adopted pursuant

to this part, or failure to make a report or return, every notice of a determination of an additional amount due shall be given within three years after the date when the amount was required to have been paid or the report or return was due, or within three years after the report or return was filed, whichever period expires later. In the case of failure to make a report or return, the notice of determination shall be mailed within eight years after the date the amount of the report or return was due.

History.—Stats. 1993, Ch. 1113, in effect January 1, 1993, added “or return” after “a report” in the first and second sentences; added “or the report . . . expires later” after “been paid”; substituted “report or return” for “fee” after “amount of the”.

50113.2. Waiver. If, before the expiration of the time prescribed in Section 50113.1 for the mailing of a notice of deficiency determination, the fee payer has consented in writing to the mailing of the notice after that time, the notice may be mailed at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Article 3. Redeterminations

- § 50114. Petition for redetermination.
- § 50115. Form and content of petition.
- § 50116. Oral hearing.
- § 50117. Decrease or increase of determination.
- § 50118. Finality date of order or decision.
- § 50119. Due date of determination; penalty.
- § 50120. Service of notice.

50114. Petition for redetermination. Any person from whom an amount is determined to be due under Article 2 (commencing with Section 50113), or any person directly interested, may petition for a redetermination thereof within 30 days after service of a notice of determination on that person. If a petition for redetermination is not filed within the 30-day period, the amount determined to be due becomes final at the expiration of that time period.

History.—Stats. 1990, Ch. 1366, in effect September 27, 1990, substituted “within 30 days after service of a notice of determination on that person” and “within the 30-day period” for “on or before the date specified in Section 50110” and “time period” for “date”.

50115. Form and content of petition. Every petition for redetermination shall be in writing and shall state the specific grounds upon which the petition is founded. The petition may be amended to state additional grounds at any time prior to the date on which the board issues its order or decision on the petition for redetermination.

50116. Oral hearing. If a petition for redetermination is filed within the period specified in Section 50114, the board shall reconsider the amount determined to be due, and, if the person has so requested in the person’s petition, the board shall grant the person an oral hearing and shall give the person 10 days’ notice of the time and place of the hearing. The board may continue the hearing from time to time as may be necessary.

50117. Decrease or increase of determination. The board may decrease or increase the amount of the determination before it becomes final, but the amount may be increased only if a claim for the increase is asserted by the board at or before the hearing.

50118. Finality date of order or decision. The order or decision of the board upon a petition for redetermination shall become final 30 days after service upon the petitioner of the notice of the order or decision.

50119. Due date of determination; penalty. All amounts determined to be due by the board under Article 2 (commencing with Section 50113) are due and payable at the time they become final, and, if not paid when due and payable, a penalty of 10 percent of the amount determined to be due shall be added to the amount due and payable.

History.—Stats. 1990, Ch. 1366, in effect September 27, 1990, substituted “10” for “25”.

50120. Service of notice. Any notice required by this article shall be served personally or by mail in the same manner as prescribed for service of notice by Section 50113.

Article 4. Jeopardy Determinations *

- § 50120.1. Jeopardy determinations.
- § 50120.2. Petition for redetermination; security.
- § 50120.3. Administrative hearing.

50120.1. Jeopardy determinations. If the board determines that the collection of any amount of fee will be jeopardized by delay, it shall thereupon make a determination of the amount of fee due, noting that fact upon the determination, and the amount of the fee shall be immediately due and payable. If the amount of the fee, interest, and penalty specified in the jeopardy determination is not paid, or a petition for redetermination is not filed, within 10 days after the service upon the fee payer of a notice of the determination, the determination becomes final, and the delinquency penalty and interest provided in Section 50112 shall attach to the amount of fee specified in the jeopardy determination.

History.—Stats. 2004, Ch. 527 (SB 1881), in effect January 1, 2005, substituted “penalty and interest provided in Section 50112” for “penalty provided in Section 50112 and the interest provided in 50112.1” in the last sentence.

50120.2. Petition for redetermination; security. The fee payer against whom a jeopardy determination is made may file a petition for the redetermination thereof, pursuant to Article 3 (commencing with Section 50114), with the board within 10 days after the service upon the fee payer of notice of the determination, and he or she shall, within the 10-day period, deposit with the board that security which the board determines to be necessary to ensure compliance with this part. The security may be sold by the board at a public sale if it becomes necessary in order to recover any amount due under this part. Notice of the sale may be served upon the person who deposited the security personally or by mail in the same manner as prescribed for service of notice by subdivision (d) of Section 50113. After

* Article 4 was added by Stats. 1990, Ch. 1366, in effect September 27, 1990.

that sale, the surplus, if any, above the amount due under this part shall be returned to the person who deposited the security.

50120.3. Administrative hearing. (a) In accordance with rules and regulations which the board may adopt, the person against whom a jeopardy determination is made may apply for an administrative hearing for one or more of the following purposes:

(1) To establish that the determination is excessive.
(2) To establish that the sale of property that may be seized after issuance of the jeopardy determination, or any part thereof, shall be delayed pending the administrative hearing because the sale would result in irreparable injury to the person.

(3) To request the release of all or part of the property to the person.

(4) To request a stay of collection activities.

(b) The application shall be filed within 30 days after service of the notice of jeopardy determination and shall be in writing and state the specific factual and legal grounds upon which it is founded. The person shall not be required to post any security in order to file the application and to obtain the hearing. However, if the person does not deposit, within the 10-day period prescribed in Section 50120.2, that security which the board determines to be necessary to ensure compliance with this part, the filing of the application shall not operate as a stay of collection activities, except for sale of property seized after issuance of the jeopardy determination. Upon a showing of good cause for failure to file a timely application for an administrative hearing, the board may allow a filing of the application and grant the person an administrative hearing. The filing of an application pursuant to this section does not affect Section 50120.1, relating to the finality date of the determination, and the attachment of the delinquency penalty and interest.

CHAPTER 4. COLLECTION OF FEE

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| Article. 1. | Suit for Fee. §§ 50121-50122. |
| 2. | Judgment for Fee. §§ 50123-50124. |
| 3. | Warrant for Collection. §§ 50125-50127. |
| 4. | Seizure and Sale. §§ 50128-50131. |
| 5. | Miscellaneous. §§ 50132-50138.7. |

Article 1. Suit for Fee

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| § 50121. | Legal actions; Attorney General. |
| § 50122. | Attachment. |

50121. Legal actions; Attorney General. The board may bring any legal action necessary to collect any deficiency in the fee required to be paid, and, upon the board's request, the Attorney General shall bring the action.

50122. Attachment. In any action brought to enforce the rights of the state with respect to any fee, a certificate by the board showing the delinquency shall be prima facie evidence of the levy of the fee, of the delinquency of the amount of fee and penalty set forth in the certificate, and

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of compliance by the board with this part in relation to the computation and levy of the fee. In that action, a writ of attachment may be issued in the manner provided by Chapter 5 (commencing with Section 485.010) of Title 6.5 of Part 2 of the Code of Civil Procedure.

Article 2. Judgment for Fee

- § 50123. State tax lien.
§ 50124. Release of liens.

50123. State tax lien. If any person fails to pay any amount imposed pursuant to this part at the time that it becomes due and payable, the amount, including interest and penalties, together with any costs in addition to the amount, are a perfected and enforceable state tax lien which is subject to Chapter 14 (commencing with Section 7150) of Division 7 of Title 1 of the Government Code.

History.—Stats, 1990, Ch. 1366, in effect September 27, 1990, added “interest and” before “penalties”.

50124. Release of liens. (a) If the board determines that the amount of any fees, interest, and penalties are sufficiently secured by a lien on other property or that the release or subordination of the lien imposed under this article will not jeopardize the collection of the amount of the fee and penalties, the board may at any time release all, or any portion of, the property subject to the lien from the lien or may subordinate the lien to other liens and encumbrances.

(b) If the board finds the liability represented by the lien imposed under this article is legally unenforceable, the board may release the lien.

(c) A certificate by the board that any property has been released from a lien or that the lien has been subordinated to other liens and encumbrances is conclusive evidence that the property has been released or that the lien has been subordinated, as provided in the certificate.

History.—Stats. 1990, Ch. 1366, in effect September 27, 1990, substituted “fees” for “fee” and added “interest” before “and penalties”.

Article 3. Warrant for Collection

- § 50125. Warrant; time of issuing.
§ 50126. Fees and expenses.
§ 50127. Collection of fees.

50125. Warrant; time of issuing. At any time within three years after any person is delinquent in the payment of any amount required to be paid under this part, or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, the board, or its authorized representative, may issue a warrant for the enforcement of any lien and for the collection of any amount required to be paid to the state under this part. The warrant shall be directed to any sheriff or marshal and has the same effect as a writ of execution. The warrant shall be levied and sale made pursuant to it in the same manner and with the same effect as a levy of, and sale pursuant to, a writ of execution.

History.—Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “, marshal, or constable” after “to any sheriff” in the second sentence.

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50126. Fees and expenses. The board may pay or advance to the sheriff or marshal, the same fees, commissions, or expenses for services as are provided by law for similar services pursuant to a writ of execution. The board, and not the court, shall approve the fees for publication in a newspaper.

History.—Stats. 1996, Ch. 872, in effect January 1, 1997, substituted “or marshal” for “, marshal, or constable” after “to the sheriff” in the first sentence.

50127. Collection of fees. The fees, commissions, and expenses are the obligation of the person required to pay any amount under this part and may be collected from the person by the warrant or in any other manner provided in this part for the collection of the fee.

Article 4. Seizure and Sale

- § 50128. Seizure and sale.
- § 50129. Notice of sale.
- § 50130. Bill of sale; deed.
- § 50131. Disposition of proceeds.

50128. Seizure and sale. Whenever any fee payer is delinquent in the payment of the fee, the board, or its authorized representative, may seize any property, real or personal, of the fee payer, and sell at public auction the property seized, or a sufficient portion of the property, to pay the fee due, together with any penalties imposed for the delinquency and all costs that have been incurred on account of the seizure and sale.

50129. Notice of sale. Notice of the sale and the time and place thereof, shall be given to the delinquent fee payer and to all persons who have an interest of record in the property at least 20 days before the date set for the sale in the following manner: The notice shall be personally served or enclosed in an envelope addressed to the fee payer or other person at his or her last known residence or place of business in this state as it appears upon the records of the board, if any, and depositing it in the United States registered mail, postage prepaid. The notice shall be published pursuant to Section 6063 of the Government Code in a newspaper of general circulation published in the city in which the property or a part thereof is located if any part thereof is situated in a city or if not, in a newspaper of general circulation published in the county in which the property or a part thereof is located. Notice shall also be posted in both of the following manners:

(a) One public place in the city in which the interest in property is to be sold if it is to be sold in a city or, if not to be sold in a city, one public place in the county in which the interest to the property is to be sold.

(b) One conspicuous place on the property.

The notice shall contain a description of the property to be sold, a statement of the amount of the fees, penalties, and costs, the name of the fee payer, and the further statement that unless the fees, penalties, and costs are paid on or before the time fixed in the notice of the sale, the property, or so much of the property as may be necessary, will be sold in accordance with law and the notice.

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History.—Stats. 1990, Ch. 1366, in effect September 27, 1990, created subdivision “a” substituted “Notice of the sale” for “The board shall give written notice of an intended sale pursuant to this article,” “20” for “10”, “The notice shall be personally served or enclosed” for “by enclosing the notice”, “or other person at his or her” for “at the fee payer’s”, “6063” for “6062”, added “in a newspaper of general circulation published” after “Code”, substituted “or a part thereof is located. Notice shall also be posted in both of the following manners:” for “seized is to be sold.”, substituted paragraphs (1) and (2) for “If there is no newspaper of general circulation in the county, the notice shall be posted in three public places in the county for the 10 day period.”, created subdivision (b), added “interest” after “fees” in the new subdivision (b). Stats. 1990, Ch. 1528, in effect January 1, 1991, substituted the first paragraph for subdivision (a), “thereof” for “of the sale”, added “in the following manner:” in the first sentence; added “city in which . . . or if not,” after “published in the” in the third sentence; created subdivisions (a) and (b) from paragraphs (1) and (2); created second paragraph from former subdivision (b); deleted “interest” after “fees” in the second paragraph.

50130. Bill of sale; deed. At a sale conducted pursuant to this article the board, or its authorized agent, shall sell the property, in accordance with all applicable provisions of law and the notice specified in Section 50129, and the board shall deliver to the purchaser a bill of sale for the personal property and a deed for any real property sold. The bill of sale or deed vests title in the purchaser. The unsold portion of any property seized may be left at the place of sale at the risk of the fee payer.

50131. Disposition of proceeds. If, after a sale conducted pursuant to this article, the money received exceeds the amount of all fees, interest, penalties, and costs due the state from the fee payer, the board shall return the excess to the fee payer and obtain the fee payer’s receipt. If any persons having an interest in or lien upon the property files with the board prior to the sale notice of the person’s interest, the board shall withhold any excess pending a determination of the rights of the respective parties to the excess moneys by a court of competent jurisdiction. If the receipt of the fee payer is not available, the board shall deposit the excess moneys with the Controller, as trustee for the owner, subject to the order of the fee payer, and the fee payer’s heirs, successors, or assigns.

History.—Stats. 1990, Ch. 1366, in effect September 27, 1990 added “interest” after “fees”. Stats. 1996, Ch. 860, in effect January 1, 1997, substituted “excess moneys” for “party” after “parties to the” in the second sentence and substituted “Controller” for “Treasurer” after “moneys with the” in the last sentence.

Article 5. Miscellaneous

- § 50132. Notice to creditors.
- § 50133. Credits; prohibition against transfer or disposal.
- § 50134. Credits; bank.
- § 50135. Credits; liability.
- § 50136. Notice of levy.
- § 50136.5 Employer withheld earnings.
- § 50137. Remedies; cumulative.
- § 50138. Remedies.
- § 50138.5. Furnishing of partnership agreement.
- § 50138.6. Installment payment agreement.
- § 50138.7. Installment payment agreement; annual statement.

50132. Notice to creditors. If any fee payee is delinquent in the payment of any obligation imposed by this part, or if any determination has been made against a fee payer which remains unpaid, the board may, not later than three years after the payment becomes delinquent, or the last recording or filing of a notice of state tax lien under Section 7171 of the Government Code, give notice thereof, personally or by first-class mail, to all persons, including any officer or department of the state or any political subdivision

or agency of the state, having in their possession or under their control any credits or other personal property belonging to the fee payer, or owing any debts to the fee payer. In the case of any state officer, department, or agency, the notice shall be given to the officer, department, or agency prior to the time it presents the claim of the delinquent fee payer to the Controller.

History.—Stats. 1990, Ch. 1366, in effect September 27, 1990, added “any fee payer . . . this part, or if” to the first sentence.

50133. Credits; prohibition against transfer or disposal. After receiving the notice specified in Section 50132, the persons so notified shall not transfer or make any other disposition of the credits, other personal property, or debts in their possession or under their control at the time they receive the notice until the board consents to a transfer or disposition or until 60 days after the receipt of the notice, whichever occurs first.

50134. Credits; banks. All persons notified pursuant to Section 50132 shall immediately, after receipt of the notice, advise the board of all credits, other personal property, or debts in their possession, under their control, or owing by them. If the notice seeks to prevent the transfer or other disposition of a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice, to be effective, shall state the amount, interest, and penalty due from the person and shall be delivered or mailed to the branch or office of the bank at which the deposit is carried or at which the credits or personal property are held. Notwithstanding any other provision of law, with respect to a deposit in a bank or other credits or personal property in the possession or under the control of a bank, the notice shall only be effective with respect to an amount not in excess of the amount, interest, and penalty due from the person.

History.—Stats. 1990, Ch. 1366, in effect September 27, 1990, added “, interest,” after “amount” in the second and third sentences.

50135. Credits; liability. If, during the effective period of the notice to withhold, given pursuant to Section 50132, any person so notified makes any transfer or disposition of the property or debts required to be withheld, to the extent of the value of the property or the amount of the debts thus transferred or paid, the person is liable to the state for any indebtedness due under this part from the fee payer with respect to whose obligation the notice was given, if solely because of that transfer or disposition, the state is unable to recover the indebtedness of the person with respect to whose obligation the notice was given.

Text of section operative through June 30, 2001

50136. Notice of levy. (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their possession, or under their control, any payments, credits other than payments, or other personal property belonging to a fee payer or other person liable for any amount under this part to withhold from these credits or other

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personal property the amount of any fee, interest, or penalties due from the fee payer or other person, or the amount of any liability incurred under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in Section 9105 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the fee payer or other person liable for the fee.

(3) Any other payments or credits due or becoming due the fee payer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the fee payer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Stats. 1990, Ch. 1366, in effect September 27, 1990, created subdivisions (a) and (b) with the first and second paragraph; added ", interest," after "fee" in subdivision (a). Stats. 1993, Ch. 1113, in effect January 1, 1994, deleted comma after "notice of levy" in subdivision (a) and added subdivision (c). Stats. 1998, Ch. 609 (Ch. 2232), in effect January 1, 1999, substituted "payments, credits other than payments," for "credits" after "their control, any" in the first sentence and added "The notice of . . . in subdivision (b)." as the second sentence in subdivision (a); relettered subdivision (b) as (e); relettered subdivision (c) as (b); and added subdivisions (c) and (d).

Text of section operative July 1, 2001

50136. **Notice of levy.** (a) The board may, by notice of levy served personally or by first-class mail, require all persons having in their

possession, or under their control, any payments, credits other than payments, or other personal property belonging to a feepayer or other person liable for any amount under this part to withhold from these credits or other personal property the amount of any fee, interest, or penalties due from the feepayer or other person, or the amount of any liability incurred under this part, and to transmit the amount withheld to the board at the time it may designate. The notice of levy shall have the same effect as a levy pursuant to a writ of execution except for the continuing effect of the levy, as provided in subdivision (b).

(b) The person served shall continue to withhold pursuant to the notice of levy until the amount specified in the notice, including accrued interest, has been paid in full, until the notice is withdrawn, or until one year from the date the notice is received, whichever occurs first.

(c) The amount required to be withheld is the lesser of the following:

(1) The amount due stated on the notice.

(2) The sum of both of the following:

(A) The amount of the payments, credits other than payments, or personal property described above and under the person's possession or control when the notice of levy is served on the person.

(B) The amount of each payment that becomes due following service of the notice of levy on the person and prior to the expiration of the levy.

(d) For the purposes of this section, the term "payments" does not include earnings as that term is defined in subdivision (a) of Section 706.011 of the Code of Civil Procedure or funds in a deposit account as defined in paragraph (29) of subdivision (a) of Section 9102 of the Commercial Code. The term "payments" does include any of the following:

(1) Payments due for services of independent contractors, dividends, rents, royalties, residuals, patent rights, or mineral or other natural rights.

(2) Payments or credits due or becoming due periodically as a result of an enforceable obligation to the feepayer or other person liable for the fee.

(3) Any other payments or credits due or becoming due the feepayer or other person liable as the result of written or oral contracts for services or sales whether denominated as wages, salary, commission, bonus, or otherwise.

(e) In the case of a financial institution, to be effective, the notice shall state the amount due from the feepayer and shall be delivered or mailed to the branch or office of the financial institution where the credits or other property is held, unless another branch or office is designated by the financial institution to receive the notice.

History.—Stats. 1990, Ch. 1366, in effect September 27, 1990, created subdivisions (a) and (b) with the first and second paragraph; added ", interest," after "fee" in subdivision (a). Stats. 1993, Ch. 1113, in effect January 1, 1994, deleted comma after "notice of levy" in subdivision (a) and added subdivision (c). Stats. 1998, Ch. 609 (Ch. 2232), in effect January 1, 1999, substituted "payments, credits other than payments," for "credits" after "their control, any" in the first sentence and added "The notice of . . . in subdivision (b)." as the second sentence in subdivision (a); relettered subdivision (b) as (e); relettered subdivision (c) as (b); and added subdivisions (c) and (d). Stats. 1999, Ch. 991 (SB 45), in effect January 1, 2000, but operative July 1, 2001, substituted "paragraph (29) of subdivision (c) of Section 9102" for "Section 9105" after "as defined in" in subdivision (d).

50136.5. Employer withheld earnings. (a) Notwithstanding Article 7 (commencing with Section 706.151) of Chapter 5 of Title 9 of Part 2 of the Code of Civil Procedure, if the board determines upon receiving information from a feepayer or other person liable for any amount under this part that the person's employer withheld earnings for taxes pursuant to Section 50136 and failed to remit the withheld earnings to the board, the employer shall be liable for the amount not remitted. The board's determination shall be based on payroll documents or other substantiating evidence furnished by the person liable for the tax.

(b) Upon its determination, the board shall mail notice to the employer at its last known address that upon failure to remit the withheld earnings to the board within 15 days of the date of its notice to the employer, the employer shall be liable for that amount which was withheld and not remitted.

(c) If the employer fails to remit the amount withheld to the board upon notice, that amount for which the employer is liable shall be determined, collected, and paid as though it were a tax deficiency. The amount may be assessed at any time prior to seven years from the first day that the unremitted amount, in the aggregate, was first withheld. Interest shall accrue on that amount from the first day that the unremitted amount, in the aggregate, was first withheld.

(d) When the determination against the employer is final and due and payable, the person's account shall be immediately credited with an amount equal to that determined amount as though it were a payment received by the board on the first date that the unremitted amount, in the aggregate, was first withheld by the employer.

(e) Collection against the person liable for the tax is stayed for both the following amount and period:

(1) An amount equal to the amount determined by the board under subdivision (a).

(2) The earlier of the time the credit is applied to the person's account pursuant to subdivision (d) or the determination against the employer is withdrawn or revised and the person is notified by the board thereof.

(f) If under this section an amount that was withheld and not remitted to the board is final and due and payable by the employer and credited to the person's account, this remedy shall be the exclusive remedy for the person to recover that amount from the employer.

(g) This section shall apply to determinations made by the board on or after the effective date of the act adding this section.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

50137. Remedies; cumulative. The remedies of the state provided for in this chapter are cumulative, and no action taken by the board or by the Attorney General constitutes an election by the state or any of its officers to pursue any remedy to the exclusion of any other remedy for which provision is made in this part.

50138. **Remedies.** (a) The amounts required to be paid by any person under this part, together with any penalties, shall be satisfied first in any of the following cases:

(1) Whenever the person is insolvent.

(2) Whenever the person makes a voluntary assignment of the person's assets.

(3) Whenever the estate of the person in the hands of executors, administrators, or heirs is insufficient to pay all the debts due from the deceased.

(4) Whenever the estate and effects of an absconding, concealed, or absent person required to pay any amount under this part are levied upon by process of law.

(b) This section does not give the state a preference over a lien or security interest which was recorded or perfected prior to the time when the state records or files its lien, as provided in Section 7171 of the Government Code.

(c) The preference given to the state by this section is subordinate to the preferences given to claims for personal services made pursuant to Sections 1204 and 1206 of the Code of Civil Procedure.

50138.5. **Furnishing of partnership agreement.** The board shall not be subject to subdivisions (c) and (d) of Section 16307 of the Corporations Code unless, at the time of application for or issuance of a permit, license, or registration number under this part, the applicant furnishes to the board a written partnership agreement that provides that all business assets shall be held in the name of the partnership.

History.—Added by Stats. 1996, Ch. 1003, in effect January 1, 1997.

50138.6. **Installment payment agreement.** (a) The board may, in its discretion, enter into a written installment payment agreement with a person for the payment of any fees due, together with interest thereon and any applicable penalties, in installments over an agreed period. With mutual consent, the board and the fee payer may alter or modify the agreement.

(b) Upon failure of a person to fully comply with the terms of an installment payment agreement with the board, the board may terminate the agreement by mailing a notice of termination to the person. The notice shall include an explanation of the basis for the termination and inform the person of his or her right to request an administrative review of the termination. Fifteen days after the mailing of the notice, the installment payment agreement shall be void, and the total amount of the fees, interest, and penalties due shall be immediately payable.

(c) The board shall establish procedures for an administrative review for persons requesting that review whose installment payment agreements are terminated under subdivision (b). The collection of fees, interest, and penalties that are the subject of the terminated installment payment agreement may not be stayed during this administrative review process.

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(d) Subdivision (b) shall not apply to any case where the board finds collection of the fee to be in jeopardy.

(e) Except in the case of fraud, if an installment payment agreement is entered into within 45 days from the date on which the board's notice of determination or redetermination becomes final, and the person complies with the terms of the installment payment agreement, the board shall relieve the penalty imposed pursuant to Section 50119.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000. Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, added subdivision (e).

50138.7. Installment payment agreement; annual statement. The board, beginning no later than January 1, 2001, shall provide each taxpayer who has an installment payment agreement in effect under Section 50138.6 an annual statement setting forth the initial balance at the beginning of the year, the payments made during the year, and the remaining balance as of the end of the year.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

CHAPTER 5. OVERPAYMENTS AND REFUNDS

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| Article 1. | Claim for Refund. §§ 50139–50142.2. |
| 2. | Suit for Refund. §§ 50143–50149. |
| 3. | Recovery of Erroneous Refunds. §§ 50150–50150.5. |
| 4. | Cancellations. § 50151. |

Article 1. Claim for Refund

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| § 50139. | Credits and refunds. |
| § 50139.5. | Excess fee reimbursement. |
| § 50140. | Claim; limitation period. |
| § 50140.1. | Claim limitation period; financially disabled. |
| § 50141. | Failure to file claim. |
| § 50142. | Notice of action on claim. |
| § 50142.1. | Interest on overpayments. |
| § 50142.2. | Interest disallowed for intentional or careless overpayments. |

50139. Credits and refunds. (a) If the board determines that any amount of fee, interest, or penalty has been paid more than once or has been erroneously or illegally collected or computed, the board shall set forth that fact in its records and certify the amount collected in excess of what was legally due and the person from whom it was collected or by whom it was paid. The excess amount collected or paid shall be credited on any amounts then due from the person from whom the excess amount was collected or by whom it was paid under this part, and the balance shall be refunded to the person, or the person's successors, administrators, or executors.

(b) Any proposed determination by the board that is in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

History.—Stats. 1990, Ch. 1366, in effect September 27, 1990, created subdivisions (a) and (b) from the first and second paragraphs; added "interest" after "fee" in subdivision (a); substituted "Notwithstanding subdivision (a)" for "however" in subdivision (b). Stats. 1995, Ch. 555, in effect January 1, 1996, substituted "its records and certify" for "the records of the board and shall certify to the State Board of Control" after "that fact in" in the first sentence of, and substituted "The" for "If approved by the State Board of Control, the" before "excess amount collected" in the second sentence of, subdivision (a); and completely rewrote subdivision (b) which previously set a maximum threshold of \$50,000 for which the board would not have to obtain the approval of the State Board of Control.

50139.5. Excess fee reimbursement. When an amount represented by a person who is a feepayer under this part to a customer as constituting reimbursement for fees due under this part is computed upon an amount that is not subject to that fee or is in excess of that fee amount due and is actually paid by the customer to the person, the amount so paid shall be returned by the person to the customer upon notification by the State Board of Equalization or by the customer that the excess has been ascertained. If the person fails or refuses to do so, the amount so paid, if knowingly or mistakenly computed by the person upon an amount that is not subject to the fee or is in excess of the fee due, shall be remitted by that person to this state. Those amounts remitted to the state shall be credited by the board on any amounts due and payable under this part on the same activity from the person by whom it was paid to this state and the balance, if any, shall constitute an obligation due from the person to this state.

History.—Added by Stats. 1996, Ch. 1087, in effect January 1, 1997.

50140. Claim; limitation period. (a) Except as provided in subdivision (b), the board shall not approve a refund three years after the due date of the payment for the period for which the overpayment was made, or, with respect to determinations made under Article 2 (commencing with Section 50113) of Chapter 3, after six months from the date the determinations have become final, or after six months from the date of overpayment, whichever period expires later, unless a claim therefor is filed with the board within that period. The board shall not approve a credit after the expiration of that period, unless a claim for credit is filed with the board within that period.

(b) A refund may be approved by the board for any period for which a waiver is given under Section 50113.2 if a claim is filed with the board before the expiration of the period agreed upon.

(c) Every claim for refund or credit shall be in writing and shall state the specific grounds upon which the claim is founded.

History.—Stats. 1990, Ch. 1366, in effect September 27, 1990, added new subdivision (b); created subdivision (c) with former subdivision (b). Stats. 1992, Ch. 852, in effect June 20, 1992, added “or after six months from the date of overpayment,” after “become final” in subsection (a). Stats. 2001, Ch. 543 (SB 1185), substituted “after” for “within” and “from the date” for “after” in subdivision (a), effective January 1, 2002.

50140.1. Claim limitation period; financially disabled. (a) The limitation period specified in Section 50140 shall be suspended during any period of a person’s life that the person is financially disabled.

(b) (1) For purposes of subdivision (a), a person is financially disabled if the person is unable to manage his or her financial affairs by reason of medically determinable physical or mental impairment of the person which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. A person shall not be considered to have an impairment unless proof of the existence thereof is furnished in the form and manner as the board may require.

(2) A person shall not be treated as financially disabled during any period that the person's spouse or any other person is authorized to act on behalf of the person in financial matters.

(c) This section applies to a period of disability commencing before, on, or after the effective date of the act adding this section, but does not apply to any claim for refund that (without regard to this section) is barred by the operation or rule of law, including *res judicata*, as of the effective date of the act adding this section.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

50141. Failure to file claim. The failure of a person to file a claim within the time prescribed in this article constitutes a waiver of all demands against the state on account of the overpayment.

50142. Notice of action on claim. Within 30 days after disallowing any claim, in whole or in part, the board shall serve written notice of its action on the claimant pursuant to Section 50113.

50142.1. Interest on overpayments. Interest shall be computed, allowed, and paid upon any overpayment of any amount of fee at the modified adjusted rate per month established pursuant to Section 6591.5, from the 26th day of the calendar month following the period during which the overpayment was made. In addition, a refund or credit shall be made of any interest imposed upon the claimant with respect to the amount being refunded or credited.

The interest shall be paid as follows:

(a) In the case of a refund, to the 25th day of the calendar month following the date upon which the claimant, if he or she has not already filed a claim, is notified by the board that a claim may be filed or the date upon which the claim is approved by the board, whichever date is earlier.

(b) In the case of a credit, to the same date as that to which interest is computed on the fee or amount against which the credit is applied.

History.—Added by Stats. 1990, Ch. 1366, in effect September 27, 1990. Stats. 1992, Ch. 1336, in effect January 1, 1993, substituted "26th day . . . following" for "due date of the return for the period for which the overpayment was made," but "no" after "from the" in subsection (a). Stats. 1996, Ch. 320, in effect January 1, 1997, substituted "during" for "for" after "following the period" in the first sentence of the first paragraph and deleted "or the date upon which the claim is certified to the State Board of Control, whichever date is earlier" after "may be filed" in subdivision (a). Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998, added "if he or she has not already filed a claim," after "which the claimant" and added "or the date . . . date is earlier" after "may be filed" in subdivision (a).

50142.2. Interest disallowed for intentional or careless overpayments. (a) If the board determines that any overpayment has been made intentionally or by reason of carelessness, it shall not allow any interest thereon.

(b) If any person who has filed a claim for refund requests the board to defer action on the claim, the board, as a condition to deferring action, may require the claimant to waive interest for the period during which the person requests the board to defer action on the claim.

History.—Added by Stats. 1998, Ch. 420 (SB 2230), in effect January 1, 1999.

Article 2. Suit for Refund

- § 50143. Enjoining collection forbidden.
- § 50144. Necessity of refund claim.
- § 50145. Action for refund.
- § 50146. When refund claim not acted upon.
- § 50147. Action for refund; limitation.
- § 50148. Disposition of amount of judgment.
- § 50148.1. Interest.
- § 50149. Judgment for assignee forbidden.

50143. **Enjoining collection forbidden.** No injunction or writ of mandate or other legal or equitable process shall issue in any suit, action, or proceeding in any court against this state or against any office of the state to prevent or enjoin the collection of any fee sought to be collected.

50144. **Necessity of refund claim.** No suit or proceeding shall be maintained in any court for the recovery of any amount alleged to have been erroneously or illegally assessed or collected unless a claim for refund or credit has been filed in accordance with this chapter.

50145. **Action for refund.** Within 90 days after the mailing of the notice of the board's action upon a claim for refund or credit, the claimant may bring an action against the board, on the grounds set forth in the claim, in a court of competent jurisdiction in the County of Sacramento for the recovery of the whole, or any part of, the amount with respect to which the claim has been disallowed.

50146. **When refund claim not acted upon.** If the board fails to mail a notice of action on a claim within six months after the claim is filed, the claimant may, prior to the mailing of notice by the board, consider the claim disallowed and may bring an action against the board on the grounds set forth in the claim for the recovery of the whole, or any part of, the amount claimed as an overpayment.

50147. **Action for refund; limitation.** A person's failure to bring suit or action within the time specified in this article constitutes a waiver of all demands against the state on account of any alleged overpayments.

50148. **Disposition of amount of judgment.** If a judgment made pursuant to Section 50145 is rendered for the plaintiff, the amount of the judgment shall first be credited on any fees due from the plaintiff, and the balance shall be refunded to the plaintiff.

50148.1. **Interest.** In any judgment, interest shall be allowed at the modified adjusted rate per annum established pursuant to Section 6591.5, upon the amount found to have been illegally collected from the date of payment of the amount to the date of allowance of credit on account of the judgment, or to a date preceding the date of the refund warrant by not more than 30 days, the date to be determined by the board.

50149. Judgment for assignee forbidden. (a) A judgment made pursuant to Section 50145 shall not be rendered in favor of the plaintiff in any action brought against the board to recover any fee paid when the action is brought by or in the name of an assignee of the fee payer paying the tax or by any person other than the person who has paid the fee.

(b) For purposes of this section, "assignee" does not include a person who has acquired the business of the fee payer which gave rise to the fees and who is thereby a successor in interest to the fee payer.

Article 3. Recovery of Erroneous Refunds

- § 50150. Recovery of erroneous refunds.
- § 50150.1. Place of trial.
- § 50150.2. Rules of procedure, etc.
- § 50150.5. Interest on erroneous refunds.

50150. Recovery of erroneous refunds. (a) The Controller may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed, in an action brought in a court of competent jurisdiction in the County of Sacramento in the name of the people of the State of California.

(b) As an alternative to subdivision (a), the board may recover any refund or part thereof that is erroneously made, and any credit or part thereof that is erroneously allowed. In recovering any erroneous refund or credit, the board may, in its discretion, issue a deficiency determination in accordance with Article 2 (commencing with Section 50113) or Article 4 (commencing with Section 50120.1) of Chapter 3. Except in the case of fraud, the deficiency determination shall be made by the board within three years from the date of the Controller's warrant or date of credit.

History.—Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999, added subdivision designation "(a)", substituted "thereof that" for "of a refund which" after "refund or part", substituted "that" for "which" after "or part thereof", and deleted ";", and the action shall be tried in the County of Sacramento unless the court, with the consent of the Attorney General, orders a change of place of trial. The Attorney General shall prosecute the action, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proofs, trials, and appeals are applicable to the proceedings" after "State of California" in subdivision (a); and added subdivision (b).

Note.—SEC. 61. of Stats. 1998, Ch. 609 (SB 2232), effective January 1, 1999, states: It is the intent of the Legislature in enacting those provisions of this act that allow the State Board of Equalization to recover refunds administratively that no increase in taxpayer costs result from taxpayer compliance with these provisions.

50150.1. Place of trial. In any action brought pursuant to subdivision (a) of Section 50150, the court may, with the consent of the Attorney General, order a change in the place of trial.

History.—Added by Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999.

50150.2. Rules of procedure, etc. The Attorney General shall prosecute any action brought pursuant to subdivision (a) of Section 50150, and the provisions of the Code of Civil Procedure relating to service of summons, pleadings, proof, trials, and appeals shall apply to the proceedings.

History.—Added by Stats. 1998, Ch. 609 (SB 2232), in effect January 1, 1999.

50150.5. Interest on erroneous refunds. (a) Notwithstanding any other provision of this part, if the board finds that neither the person liable for payment of fees nor any party related to that person has in any way caused an

erroneous refund for which an action for recovery is provided under Section 50150, no interest shall be imposed on the amount of that erroneous refund until 30 days after the date on which the board mails a notice of determination for repayment of the erroneous refund to the person. The act of filing a claim for refund shall not be considered as causing the erroneous refund.

(b) This section shall be operative for any action for recovery under Section 50150 on or after January 1, 2000.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.

Article 4. Cancellations

§ 50151. Cancellation of determination.

50151. Cancellation of determination. (a) If any amount has been illegally determined, the board shall certify the amount determined to be in excess of the amount legally due and the person against whom the determination was made and authorize the cancellation of the amount upon the records of the board.

(b) Any proposed determination by the board that is in excess of fifty thousand dollars (\$50,000) shall be available as a public record for at least 10 days prior to the effective date of that determination.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, added subdivision letter (a), deleted “greater than fifty thousand dollars (\$50,000)” after “If any amount”, deleted “to the State Board of Control” after “board shall certify”, substituted “and” for “. If the State Board of Control approves, it shall” after “determination was made”, and deleted “if an amount not exceeding fifty thousand dollars (\$50,000) has been illegally determined, either by the person filing a return or by the board, the board, without certifying this fact to the State Board of Control, shall authorize the cancellation of the amount upon the records of the board.” as the third sentence, in subdivision (a); and added subdivision (b).

CHAPTER 6. ADMINISTRATION

- Article 1. Administration. §§ 50152–50155.5.
2. The California Taxpayers’ Bill of Rights. §§ 50156–50156.18.

Article 1. Administration

- § 50152. Enforcement by board; rules and regulations.
§ 50153. Examination of records.
§ 50154. Employees and representatives of board.
§ 50155. Certificate of notice.
§ 50155.5. Information confidential; tax preparer.

50152. Enforcement by board; rules and regulations. The board shall enforce this part and may adopt, and enforce rules and regulations relating to the administration and enforcement of this part.

50153. Examination of records. The board may examine the books and records of any feepayer, or the books and records of any person who is not a feepayer but operates an underground storage tank in a manner that may result in a fee liability being assessed against a feepayer, as it may determine to be necessary in carrying out this part.

History.—Stats. 1994, Ch. 1223, in effect January 1, 1995, substituted “feepayer, or the . . . against a feepayer,” for “fee payer” after “records of any”.

50154. Employees and representatives of board. The board may employ accountants, auditors, investigators, and other expert and clerical assistance necessary to enforce its powers and perform its duties under this part.

50155. Certificate of notice. A certificate by the board or an employee of the board stating that a notice required by this part was given by mailing or personal service is prima facie evidence in any administrative or judicial proceeding of the fact and regularity of the mailing or personal service in accordance with any requirement of this part for the giving of a notice. Unless otherwise specifically required, any notice provided by this part to be mailed or served may be given either by mailing or by personal service in the manner provided for giving notice of a deficiency determination.

50155.5. Information confidential; tax preparer. (a) Except as otherwise provided by law, any person who is engaged in the business of preparing, or providing services in connection with the preparation of, returns under Chapter 3 (commencing with Section 50109), or any person who for compensation prepares any such return for any other person, and who knowingly or recklessly does either of the following, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than one thousand dollars (\$1,000) or imprisoned no more than one year, or both, together with the costs of prosecution:

(1) Discloses any information furnished to him or her for, or in connection with, the preparation of the return.

(2) Uses that information for any purpose other than to prepare, or assist in preparing, the return.

(b) Subdivision (a) shall not apply to disclosure of information if that disclosure is made pursuant to the person's consent or pursuant to a subpoena, court order, or other compulsory legal process.

History.—Added by Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001.

Article 2. The California Taxpayers' Bill of Rights *

- § 50156. Administration.
- § 50156.1. Taxpayers' Rights Advocate.
- § 50156.2. Education and information program.
- § 50156.3. Annual hearing for taxpayer proposals.
- § 50156.4. Preparation of statements by board.
- § 50156.5. Limit on revenue collected or assessed.
- § 50156.6. Evaluation of employee's contact with taxpayers.
- § 50156.7. Plan to timely resolve claims and petitions.
- § 50156.8. Procedures relating to review conferences.
- § 50156.9. Reimbursement to taxpayers.
- § 50156.10. Investigation for nontax administrative purposes.
- § 50156.11. Settlement of disputed tax liabilities. [Repealed.]
- § 50156.11. Settlement authority.
- § 50156.12. Release of levy.

* Added by Stats. 1992, Ch. 438, in effect January 1, 1993.

- § 50156.13. Exemptions from levy.
- § 50156.14. Claim for reimbursement of bank charges by taxpayers.
- § 50156.15. Preliminary notice to taxpayer prior to lien.
- § 50156.16. Disregard by board employee or officer.
- § 50156.17. Return of property.
- § 50156.18. Offers in compromise.

50156. Administration. The board shall administer this article. Unless the context indicates otherwise, the provisions of this article shall apply to this part.

50156.1. Taxpayers' Rights Advocate. (a) The board shall establish the position of the Taxpayers' Rights Advocate. The advocate or his or her designee shall be responsible for facilitating resolution of fee payer complaints and problems, including any fee payer complaints regarding unsatisfactory treatment of fee payers by board employees, and staying actions where fee payers have suffered or will suffer irreparable loss as the result of those actions. Applicable statutes of limitation shall be tolled during the pendency of a stay. Any penalties and interest that would otherwise accrue shall not be affected by the granting of a stay.

(b) The advocate shall report directly to the executive officer of the board.

50156.2. Education and information program. (a) The board shall develop and implement an education and information program directed at, but not limited to, all of the following groups:

- (1) Fee payers newly registered with the board.
- (2) Board audit and compliance staff.

(b) The education and information program shall include all of the following:

(1) A program of written communication with newly registered fee payers explaining in simplified terms their duties and responsibilities.

(2) Participation in seminars and similar programs organized by federal, state, and local agencies.

(3) Revision of fee payer educational materials currently produced by the board that explain the most common areas of fee payer nonconformance in simplified terms.

(4) Implementation of a continuing education program from audit and compliance personnel to include the application of new legislation to fee payer activities and areas of recurrent fee payer noncompliance or inconsistency of administration.

(c) Electronic media used to comply with this section shall not represent the voice, picture, or name of members of the board or the Controller.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, substituted "in" for "of" after "Participation" in paragraph (2) of subdivision (b); deleted "pursuant" after "used", added "comply with" after "to" and substituted "or" for "of of" after "board" in subdivision (c). Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added "and compliance" after "program from audit" in paragraph (4) of subdivision (b).

50156.3. Annual hearing for taxpayer proposals. The board shall conduct an annual hearing before the full board where industry representatives and individual fee payers are allowed to present their

proposals on changes to the Underground Storage Tank Maintenance Fee Law which may further improve voluntary compliance and the relationship between fee payers and government.

50156.4. Preparation of statements by board. The board shall prepare and publish brief but comprehensive statements in simple and nontechnical language that explain procedures, remedies, and the rights and obligations of the board and fee payers. As appropriate, statements shall be provided to fee payers with the initial notice of audit, the notice of proposed additional fees, any subsequent notice of fees due, or other substantive notices. Additionally, the board shall include this language for statements in the annual fee information bulletins that are mailed to taxpayers.

50156.5. Limit on revenue collected or assessed. (a) The total amount of revenue collected or assessed pursuant to this part shall not be used for any of the following:

(1) To evaluate individual officers or employees.

(2) To impose or suggest production quotas or goals, other than quotas or goals with respect to accounts receivable.

(b) The board shall certify in its annual report submitted pursuant to Section 15616 of the Government Code that revenue collected or assessed is not used in a manner prohibited by subdivision (a).

(c) Nothing in this section shall prohibit the setting of goals and the evaluation of performance with respect to productivity and the efficient use of time.

50156.6. Evaluation of employee's contact with taxpayers. The board shall develop and implement a program what will evaluate an individual employee's or officer's performance with respect to his or her contact with fee payers. The development and implementation of the program shall be coordinated with the Taxpayers' Rights Advocate.

50156.7. Plan to timely resolve claims and petitions. The board shall, in cooperation with the State Water Resources Control Board, the Taxpayers' Rights Advocate, and other interested taxpayer-oriented groups, develop a plan to reduce the time required to resolve petitions for redetermination and claims for refunds. The plan shall include determination of standard timeframes and special review of cases that take more time than the appropriate standard timeframe.

50156.8. Procedures relating to review conferences. Procedures of the board, relating to appeals staff review conferences before a staff attorney or supervising tax auditor independent of the assessing department, shall include all of the following:

(a) Any conference shall be held at a reasonable time at a board office that is convenient to the fee payer.

(b) The conference may be recorded only if prior notice is given to the fee payer and the fee payer is entitled to receive a copy of the recording.

(c) The fee payer shall be informed prior to any conference that he or she has a right to have present at the conference his or her attorney, accountant, or other designated agent.

50156.9. Reimbursement to taxpayers. (a) Every fee payer is entitled to be reimbursed for any reasonable fees and expenses related to a hearing before the board if all of the following conditions are met:

(1) The fee payer files a claim for the fee and expenses with the board within one year of the date the decision of the board becomes final.

(2) The board, in its sole discretion, finds that the action taken by the board staff was unreasonable.

(3) The board decides that the fee payer be awarded a specific amount of fees and expenses related to the hearing, in an amount determined by the board in its sole discretion.

(b) To determine whether the board staff has been unreasonable, the board shall consider whether the board staff has established that its position was substantially justified.

(c) The amount of reimbursed fees and expenses shall be limited to the following:

(1) Fees and expenses incurred after the date of the notice of determination, jeopardy determination, or a claim for refunds.

(2) If the board finds that the staff was unreasonable with respect to certain issues but reasonable with respect to other issues, the amount of reimbursed fees and expenses shall be limited to those that relate to the issues where the staff was unreasonable.

(d) Any proposed award by the board pursuant to subdivision (a) shall be available as a public record for at least 10 days prior to the effective date of the award.

(e) The amendments to this section by the act adding this subdivision shall be operative for claims filed on or after January 1, 2000.

History.—Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “feepayer” for “fee payer” in all references throughout the section; substituted “board” for “State Board of Control” after “expenses with the” in paragraph (1) of, substituted “decides” for “makes a recommendation to the State Board of Control” after “The board” in paragraph (3) of, and deleted paragraph (4) which read: “The State Board of Control concurs with the recommendation and orders the board to provide reimbursement of fees and expenses to the taxpayer.” from, subdivision (a); and added subdivision (d). Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added “within one year . . . board becomes final” after “with the board” in paragraph (1) of, and substituted “in an amount . . . its sole discretion” for “which shall be determined by the board” after “to the hearing,” in paragraph (3) of, subdivision (a), substituted “board staff has . . . substantially justified” for “feepayer has established that the position of the board staff was not substantially justified” after “consider whether the” in subdivision (b), and added subdivision (e). Stats. 2000, Ch. 1052 (AB 2898), in effect January 1, 2001, added “of the board” after “date the decision” in paragraph (1) of subdivision (a); and substituted “the notice of determination, jeopardy determination, or a claim for refunds” for “filing petitions for redetermination, and claims for refund” after “incurred after the date of” in paragraph (1) of subdivision (c).

50156.10. Investigation for nontax administration purposes. (a) An officer or employee of the board acting in connection with any law administered by the board shall not knowingly authorize, require, or conduct any investigation of, or surveillance over, any person for nontax administration related purposes.

(b) Any person violating subdivision (a) shall be subject to disciplinary action in accordance with the State Civil Service Act, including dismissal from office or discharge from employment.

(c) This section shall not apply with respect to any otherwise lawful investigation concerning organized crime activities.

(d) The provisions of this section are not intended to prohibit, restrict, or prevent the exchange of information where the person is being investigated for multiple violations that include underground storage tank fee violations.

(e) For the purposes of this section:

(1) "Investigation" means any oral or written inquiry directed to any person, organization, or governmental agency.

(2) "Surveillance" means the monitoring of persons, places, or events by means of electronic interception, overt or covert observations, or photography, and the use of informants.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, substituted "that" for "which" after "violations" in subdivision (d) and substituted "of" for "or" after "monitoring" in paragraph (2) of subdivision (e).

50156.11. Settlement of disputed tax liabilities. [Repealed by Stats. 1995, Ch. 497, in effect January 1, 1996.]

50156.11. Settlement authority. (a) It is the intent of the Legislature that the State Board of Equalization, its staff, and the Attorney General pursue settlements as authorized under this section with respect to fee matters in dispute that are the subject of protests, appeals, or refund claims, consistent with a reasonable evaluation of the costs and risks associated with litigation of these matters.

(b) (1) Subject to paragraph (2), the executive director or chief counsel, if authorized by the executive director, of the board may recommend to the State Board of Equalization, itself, a settlement of any fee matter in dispute.

(2) No recommendation of settlement shall be submitted to the board unless and until that recommendation has been submitted by the executive director or chief counsel to the Attorney General. Within 30 days of receiving that recommendation, the Attorney General shall review the recommendation and advise, in writing, the executive director or chief counsel of the board of his or her conclusions as to whether the recommendation is reasonable from an overall perspective. The executive director or chief counsel shall, with each recommendation of settlement submitted to the board, also submit the Attorney General's written conclusions obtained pursuant to this paragraph.

(c) Whenever a reduction of fees in settlement in excess of five hundred dollars (\$500) is approved pursuant to this section, there shall be placed on file, for at least one year, in the office of the executive director of the board a public record with respect to that settlement. The public record shall include all of the following information:

- (1) The name or names of the feepayers who are parties to the settlement.
- (2) The total amount in dispute.
- (3) The amount agreed to pursuant to the settlement.

(4) A summary of the reasons why the settlement is in the best interests of the State of California.

(5) The Attorney General's conclusion as to whether the recommendation of settlement was reasonable from an overall perspective.

The public record shall not include any information that relates to any trade secret, patent, process, style of work, apparatus, business secret, or organizational structure that, if disclosed, would adversely affect the feepayer or the national defense.

(d) The members of the State Board of Equalization shall not participate in the settlement of fee matters pursuant to this section, except as provided in subdivision (e).

(e) (1) Any recommendation for settlement shall be approved or disapproved by the board, itself, within 45 days of the submission of that recommendation to the board. Any recommendation for settlement that is not either approved or disapproved by the board within 45 days of the submission of that recommendation shall be deemed approved. Upon approval of a recommendation for settlement, the matter shall be referred back to the executive director or chief counsel in accordance with the decision of the board.

(2) Disapproval of a recommendation for settlement shall be made only by a majority vote of the board. Where the board disapproves a recommendation for settlement, the matter shall be remanded to board staff for further negotiation, and may be resubmitted to the board, in the same manner and subject to the same requirements as the initial submission, at the discretion of the executive director or chief counsel.

(f) All settlements entered into pursuant to this section shall be final and nonappealable, except upon a showing of fraud or misrepresentation with respect to a material fact.

(g) Any proceedings undertaken by the board itself pursuant to a settlement as described in this section shall be conducted in a closed session or sessions.

(h) This section shall apply only to fee matters in dispute on or after the effective date of the act adding this subdivision.

(i) The Legislature finds that it is essential for fiscal purposes that the settlement program authorized by this section be expeditiously implemented. Accordingly, Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code shall not apply to any determination, rule, notice, or guideline established or issued by the board in implementing and administering the settlement program authorized by this section.

50156.12. Release of levy. (a) The board shall release any levy or notice to withhold issued pursuant to this part on any property in the event that the expense of the sale process exceeds the liability for which the levy is made.

(b) The Taxpayers' Rights Advocate may order the release of any levy or notice to withhold issued pursuant to this part or, within 90 days from the receipt of funds pursuant to a levy or notice to withhold, order the return of any amount up to one thousand five hundred dollars (\$1,500) of moneys received, upon his or her finding that the levy or notice to withhold threatens the health or welfare of the feepayer or his or her spouse and dependents or family.

(c) The board shall not sell any seized property until it has first notified the fee payer in writing of the exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure.

(d) This section shall not apply to the seizure of any property as a result of a jeopardy assessment.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, added “of Division 2” after “703.010)” and added “Part 2 of” after “Title 9 of” in subdivision (b). Stats. 1995, Ch. 555, in effect January 1, 1996, substituted “that the” for “of any of the following: (1) The” after “in the event” in subdivision (a); substituted subdivision letter (b) for paragraph number (2) and substituted “may order the . . . of moneys received,” for “orders the release of the levy or notice to withhold” after “Taxpayers’ Rights Advocate”, and substituted “feepayer” for “fee payer” after “welfare of the”, in subdivision (b); and relettered former subdivisions (b) and (c) as (c) and (d), respectively.

50156.13. Exemptions from levy. Exemptions from levy under Chapter 4 (commencing with Section 703.010) of Division 2 of Title 9 of Part 2 of the Code of Civil Procedure shall be adjusted for purposes of enforcing the collection of debts under this part to reflect changes in the California Consumer Price Index whenever the change is more than 5 percent higher than any previous adjustment.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, added “of Division 2” after “703.010)” and added “Part 2 of” after “Title 9 of”.

50156.14. Claim for reimbursement of bank charges by taxpayers.

(a) A fee payer may file a claim with the board for reimbursement of bank charges and any other reasonable third-party check charge fees incurred by the taxpayer as the direct result of an erroneous levy or notice to withhold by the board. Bank and third-party charges include a financial institution's or third party's customary charge for complying with the levy or notice to withhold instructions and reasonable charges for overdrafts that are a direct consequence of the erroneous levy or notice to withhold. The charges are those paid to the fee payer and not waived for reimbursement by the financial institution or third party. Each claimant applying for reimbursement shall file a claim with the board that shall be in a form as may be prescribed by the

board. In order for the board to grant a claim, the board shall determine that both of the following conditions have been satisfied:

(1) The erroneous levy or notice to withhold was caused by board error.

(2) Prior to the levy or notice to withhold, the fee payer responded to all contacts by the board and provided the board with any requested information or documentation sufficient to establish the fee payer's position. This provision may be waived by the board for reasonable cause.

(b) Claims pursuant to this section shall be filed within 90 days from the date of the levy or notice to withhold. Within 30 days from the date the claim is received, the board shall respond to the claim. If the board denies the claim, the fee payer shall be notified in writing of the reason or reasons for the denial of the claim.

History.—Stats. 2001, Ch. 543 (SB 1185), added “and any other . . . check charge fees” after “of bank charges” in subdivision (a), added “and third party” prior to “charges include a” in subdivision (a), added “or third party’s” after “a financial institution’s” in subdivision (a), added “or third party” after “the financial institution” in subdivision (a), effective January 1, 2002.

50156.15. Preliminary notice to taxpayer prior to lien. (a) At least 30 days prior to the filing or recording of liens under Chapter 14 (commencing with Section 7150) or Chapter 14.5 (commencing with Section 7220) of Division 7 of Title 1 of the Government Code, the board shall mail to the fee payer a preliminary notice. The notice shall specify the statutory authority of the board for filing or recording the lien, indicate the earliest date on which the lien may be filed or recorded, and state the remedies available to the fee payer to prevent the filing or recording of the lien. In the event fee liens are filed for the same liability in multiple counties, only one preliminary notice shall be sent.

(b) The preliminary notice required by this section shall not be required with respect to jeopardy determinations issued under Article 4 (commencing with Section 50120.1) of Chapter 3.

(c) If the board determines that the filing of a lien was in error, it shall mail a release to the fee payer and the entity recording the lien as soon as possible, but no later than seven days, after this determination and receipt of lien recording information. The release shall contain a statement that the lien was filed in error. In the event the erroneous lien is obstructing a lawful transaction, the board shall immediately issue a release of lien to the fee payer and the entity recording the lien.

(d) When the board releases a lien that has been erroneously filed, notice of that release shall be mailed to the fee payer and, upon the request of the fee payer, a copy of the release shall be mailed to the major credit reporting companies in the county where the lien was filed.

(e) The board may release or subordinate a lien if the board determines that the release or subordination will facilitate the collection of the fee liability or will be in the best interest of the state and the fee payer.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, substituted “be required with respect to” for “apply to” after “shall not” and substituted “filed” for “files” after “the lien was” in subdivision (c); added “that has been” after “a lien” and substituted “release” for “fact” after “of that” in subdivision (d). Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000, added subdivision (e).

50156.16. Disregard by board employee or officer. (a) If any officer or employee of the board recklessly disregards board-published procedures, a fee payer aggrieved by that action or omission may bring an action for damages against the State of California in superior court.

(b) In any action brought under subdivision (a), upon finding of liability on the part of the State of California, the state shall be liable to the plaintiff in an amount equal to the sum of all of the following:

(1) Actual and direct monetary damages sustained by the plaintiff as a result of the actions or omissions.

(2) Reasonable litigation costs including any of the following:

(A) Reasonable court costs.

(B) Prevailing market rates for the kind or quality of services furnished in connection with any of the following:

(i) The reasonable expenses of expert witnesses in connection with the civil proceeding, except that no expert witness shall be compensated at a rate in excess of the highest rate of compensation for expert witnesses paid by the State of California.

(ii) The reasonable cost of any study, analysis, engineering report, test, or project that is found by the court to be necessary for the preparation of the party's case.

(iii) Reasonable fees paid or incurred for the services of attorneys in connection with the civil proceeding, except that those fees shall not be in excess of seventy-five dollars (\$75) per hour unless the court determines that an increase in the cost of living or a special factor, such as the limited availability of qualified attorneys for the proceeding, justifies a higher rate.

(c) In the awarding of damages under subdivision (b), the court shall take into consideration the negligence or omissions, if any, on the part of the plaintiff that contributed to the damages.

(d) Whenever it appears to the court that the fee payer's position in the proceeding brought under subdivisions (a) is frivolous, the court may impose a penalty against the plaintiff in an amount not to exceed ten thousand dollars (\$10,000). A penalty so imposed shall be paid upon notice and demand from the board and shall be collected as a tax imposed under this part.

History.—Stats. 1993, Ch. 589, in effect January 1, 1994, substituted "that" for "which" after "plaintiff" in subdivision (c).

50156.17. Return of property. (a) Except in any case where the board finds collection of the fee to be in jeopardy, if any property has been levied upon, the property or the proceeds from the sale of the property shall be returned to the fee payer if the board determines any one of the following:

(1) The levy on the property was not in accordance with the law.

(2) The fee payer has entered into and is in compliance with an installment payment agreement pursuant to Section 50138.6 to satisfy the fee liability for which the levy was imposed, unless that or another agreement allows for the levy.

(3) The return of the property will facilitate the collection of the fee liability or will be in the best interest of the state and the fee payer.

(b) Property returned under paragraphs (1) and (2) of subdivision (a) is subject to the provisions of Section 50156.14.

History.—Added by Stats. 1999, Ch. 929 (AB 1638), in effect January 1, 2000.

50156.18. Offers in compromise. (a) (1) Beginning January 1, 2003, the executive director and chief counsel of the board, or their delegates, may compromise any final fee liability in which the reduction of the fee is seven thousand five hundred dollars (\$7,500) or less.

(2) Except as provided in paragraph (3), the board, upon recommendation by its executive director and chief counsel, jointly, may compromise a final fee liability involving a reduction in the fee in excess of seven thousand five hundred dollars (\$7,500). Any recommendation for approval of an offer in compromise that is not either approved or disapproved within 45 days of the submission of the recommendation shall be deemed approved.

(3) The board, itself, may by resolution delegate to the executive director and the chief counsel, jointly, the authority to compromise a final fee liability in which the reduction of the fee is in excess of seven thousand five hundred dollars (\$7,500), but less than ten thousand dollars (\$10,000).

(b) For purposes of this section, “a final fee liability” means any final fee liability arising under Part 26 (commencing with Section 50101), or related interest, additions to the fee, penalties, or other amounts assessed under this part.

(c) Offers in compromise shall be considered only for liabilities that were generated from a business that has been discontinued or transferred, where the feepayer making the offer no longer has a controlling interest or association with the transferred business or has a controlling interest or association with a similar type of business as the transferred or discontinued business.

(d) For amounts to be compromised under this section, the following conditions shall exist:

(1) The feepayer shall establish that:

(A) The amount offered in payment is the most that can be expected to be paid or collected from the feepayer’s present assets or income.

(B) The feepayer does not have reasonable prospects of acquiring increased income or assets that would enable the feepayer to satisfy a greater amount of the liability than the amount offered, within a reasonable period of time.

(2) The board shall have determined that acceptance of the compromise is in the best interest of the state.

(e) A determination by the board that it would not be in the best interest of the state to accept an offer in compromise in satisfaction of a final fee liability shall not be subject to administrative appeal or judicial review.

(f) When an offer in compromise is either accepted or rejected, or the terms and conditions of a compromise agreement are fulfilled, the board shall notify the feepayer in writing. In the event an offer is rejected, the amount posted will either be applied to the liability or refunded, at the discretion of the feepayer.

(g) When more than one feepayer is liable for the debt, such as with spouses or partnerships or other business combinations, the acceptance of an offer in compromise from one liable feepayer shall not relieve the other feepayers from paying the entire liability. However, the amount of the liability shall be reduced by the amount of the accepted offer.

(h) Whenever a compromise of the fee or penalties or total fees and penalties in excess of five hundred dollars (\$500) is approved, there shall be placed on file for a least one year in the office of the executive director of the board a public record with respect to that compromise. The public record shall include all of the following information:

- (1) The name of the feepayer.
- (2) The amount of unpaid fees and related penalties, additions to fees, interest, or other amounts involved.
- (3) The amount offered.
- (4) A summary of the reason why the compromise is in the best interest of the state.

The public record shall not include any information that relates to any trade secrets, patent, process, style of work, apparatus, business secret, or organizational structure, that if disclosed, would adversely affect the feepayer or violate the confidentiality provisions of Chapter 8 of Article 2 (commencing with Section 50156).

No list shall be prepared and no releases distributed by the board in connection with these statements.

(i) Any compromise made under this section may be rescinded, all compromised liabilities may be reestablished (without regard to any statute of limitations that otherwise may be applicable), and no portion of the amount offered in compromise refunded, if either of the following occurs:

(1) The board determines that any person did any of the following acts regarding the making of the offer:

(A) Concealed from the board any property belonging to the estate of any feepayer or other person liable for the fee.

(B) Received, withheld, destroyed, mutilated, or falsified any book, document, or record or made any false statement, relating to the estate or financial condition of the feepayer or other person liable for the fee.

(2) The feepayer fails to comply with any of the terms and conditions relative to the offer.

(j) Any person who, in connection with any offer or compromise under this section, or offer of that compromise to enter into that agreement, willfully does either of the following shall be guilty of a felony and, upon

conviction, shall be fined not more than fifty thousand dollars (\$50,000) or imprisoned not more than three years, or both, together with the costs of investigation and prosecution:

(1) Conceals from any officer or employee of this state any property belonging to the estate of a feepayer or other person liable in respect of the fee.

(2) Receives, withholds, destroys, mutilates, or falsifies any book, document, or record, or makes any false statement, relating to the estate or financial condition of the feepayer or other person liable in respect of the fee.

(k) For purposes of this section, “person” means the feepayer, any member of the feepayer’s family, any corporation, agent, fiduciary, or representative of, or any other individual or entity acting on behalf of, the feepayer, or any other corporation or entity owned or controlled by the feepayer, directly or indirectly, or that owns or controls the feepayer, directly or indirectly.

History.—Added by Stats. 2002, Ch. 152 (AB 1458), in effect January 1, 2003.

CHAPTER 7. DISPOSITION OF PROCEEDS

§ 50157. Underground Storage Tank Cleanup Fund.

§ 50158. Money for refunds.

50157. Underground Storage Tank Cleanup Fund. All fees, interest, and penalties imposed, and all amounts of fees required to be paid to the state pursuant to Section 50108 shall be paid to the board in the form of remittances payable to the State Board of Equalization of the State of California. The board shall transmit the payments to the Treasurer to be deposited in the Underground Storage Tank Cleanup Fund in the State Treasury.

History.—Stats. 1990, Ch. 1366, in effect September 27, 1990, added “,interest,” after “fees”. Stats. 1998, Ch. 350 (SB 2231), in effect January 1, 1999, substituted “State Treasury” for “General Fund” after “Fund in the” in the second sentence.

50158. Money for refunds. The money in the fund shall, upon order of the Controller, be drawn therefrom for refunds under this part.

CHAPTER 8. DISCLOSURE OF INFORMATION

§ 50159. Disclosure of information.

§ 50160. Information to interested parties.

§ 50161. Information collected pursuant to other laws.

§ 50162. Information sharing.

50159. Disclosure of information. (a) The board shall provide any information obtained under this part to the State Water Resources Control Board, including any information regarding underground storage tanks containing petroleum.

(b) The State Water Resources Control Board and the board may utilize any information obtained pursuant to this part to develop data on underground storage tanks containing petroleum within the state.

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Notwithstanding Section 50161, the State Water Resources Control Board may make this underground storage tank data available to the public.

(c) The board may disclose otherwise confidential information obtained from the lessee or operator of an underground storage tank, or from the person who sold or provided petroleum to the lessee or operator of the underground storage tank, only to the fee payer and only to the extent that this information is necessary for assessment, administration, and verification of the underground storage tank fee.

History.—Stats. 1994, Ch. 1223, in effect January 1, 1995, added subdivision (c). Stats. 1999, Ch. 941 (SB 1231), in effect January 1, 2000, added “, or from the . . . underground storage tank,” after “underground storage tank” in subdivision (c).

50160. Information to interested parties. A fee payer’s successors, receivers, trustees, executors, administrators, assignees, or guarantors, if directly interested, may be given information regarding the determination of any unpaid fee or the amount of fees, interest, or penalties required to be collected or assessed.

History.—Stats. 1990, Ch. 1366, in effect September 27, 1990 added “, interest,” after “fee”.

50161. Information collected pursuant to other laws. Except as provided in subdivisions (b) and (c) of Section 50159 and Section 50162, this chapter does not limit or increase public access to information on any aspect of petroleum contained in underground storage tanks made available pursuant to any other state or local law, regulation, or ordinance.

History.—Stats. 1994, Ch. 1223, in effect January 1, 1995, substituted “subdivisions (b) and (c)” for “subdivision (b)” after “Except as provided in”. Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998, added “and Section 50162” after “of Section 50159”.

50162. Information sharing. (a) Upon request from the officials to whom is entrusted the enforcement of the motor fuel tax laws of another government, the board may furnish to those officials any information in the possession of the board that is deemed essential to the enforcement of the motor fuel tax laws. Any information so furnished shall not be used for any purpose other than that for which it was furnished.

(b) The board may furnish to any state or federal agency investigating violations of or enforcing any state or federal law related to motor fuels any motor fuel information in the possession of the board that is deemed necessary for the enforcement of those laws.

History.—Added by Stats. 1997, Ch. 620 (SB 1102), in effect January 1, 1998.

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GOVERNMENT CODE PROVISIONS

Relating to the Underground Storage Tank Maintenance Fee Law

CHAPTER 8.5. LOANS FOR REPLACEMENT, REMOVING, OR UPGRADING OF UNDERGROUND STORAGE TANKS

(**Note:** For history of any of these sections see Government Code, annotated, published by Deering or West.)

- § 15399.10. Definitions. [Repealed.]
- § 15399.11. Loan program. [Repealed.]
- § 15399.12. Loan eligibility. [Repealed.]
- § 15399.21. Repeal of chapter.

15399.10. **Definitions.** [Repealed by Stats. 2003, Ch. 229 (AB 1757), in effect January 1, 2004.]

15399.11. **Loan program.** [Repealed by Stats. 2003, Ch. 229 (AB 1757), in effect January 1, 2004.]

15399.12. **Loan eligibility.** [Repealed by Stats. 2003, Ch. 229 (AB 1757), in effect January 1, 2004.]

15399.21. **Repeal of chapter.** This chapter is repealed as of January 1, 2004, unless a later enacted statute that is enacted on or before January 1, 2004, deletes or extends that date.

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HEALTH AND SAFETY CODE PROVISIONS

Relating to the Underground Storage Tank Maintenance Fee Law

CHAPTER 6.7 [Second of two] UNDERGROUND STORAGE OF HAZARDOUS SUBSTANCES

- § 25280. Legislative findings and declarations.
- § 25280.5. Additional legislative findings and declaration.
- § 25280.6. Responsibility of owner and operator.
- § 25281. Definitions.
- § 25281.5. "Pipe" defined; exclusions.
- § 25282. Master list of hazardous substances.
- § 25283. Implementation of chapter; notice by city of assumption of responsibility; proration of revenue.
- § 25283.1. Joint powers agreement.
- § 25283.5. Exemptions from chapter; underground storage tanks; criteria.
- § 25284. Permit to own or operate underground storage tank; transferred permits.
- § 25285. Permit; term; inspection; fee and surcharge.
- § 25285.1. Revocation or modification of permit; justifiable reasons.
- § 25286. Application for permit or renewal; form; fee; conditions; copies; contents; storage of unlisted substances.
- § 25290. Trade secrets; definition; disclosure; identification of information on application for permit.
- § 25290.1. Performance standards.
- § 25290.1.1. Notice to comply.
- § 25290.1.2. Equipment certification.
- § 25290.2. Product tight.
- § 25296.09. Santa Clara Valley Water District.
- § 25299.01. Injunctions; restraining orders or other orders.
- § 25299.02. Civil actions; joinder or consolidation.
- § 25299.03. County in which civil action is brought.
- § 25299.04. Temporary restraining order, preliminary or permanent injunction; proofs.
- § 25299.5. Construction of chapter.

25280. Legislative findings and declarations. (a) The Legislature finds and declares as follows:

(1) Substances hazardous to the public health and safety and to the environment are stored prior to use or disposal in thousands of underground locations in the state.

(2) Underground tanks used for the storage of hazardous substances and wastes are potential sources of contamination of the ground and underlying aquifers, and may pose other dangers to public health and the environment.

(3) In several known cases, underground storage of hazardous substances, including, but not limited to, industrial solvents, petroleum products, and other materials, has resulted in undetected and uncontrolled releases of hazardous substances into the ground. These releases have contaminated public drinking water supplies and created a potential threat to the public health and to the waters of the state.

(4) The Legislature has previously enacted laws regulating the management of hazardous wastes, including statutes providing the means to clean up releases of hazardous substances into the environment when the

public health, domestic livestock, wildlife, and the environment are endangered. Current laws do not specifically govern the construction, maintenance, testing, and use of underground tanks used for the storage of hazardous substances, or the short-term storage of hazardous wastes prior to disposal, for the purposes of protecting the public health and the environment.

(5) The protection of the public from releases of hazardous substances is an issue of statewide concern.

(b) The Legislature therefore declares that it is in the public interest to establish a continuing program for the purpose of preventing contamination from, and improper storage of, hazardous substances stored underground. It is the intent of the Legislature, in enacting this chapter, to establish orderly procedures that will ensure that newly constructed underground storage tanks meet appropriate standards and that existing tanks be properly maintained, inspected, tested, and upgraded so that the health, property, and resources of the people of the state will be protected.

25280.5. Additional legislative findings and declaration. The Legislature finds and declares all of the following:

(a) Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code provides for regulation of underground storage tanks and allows underground storage tanks to be regulated pursuant to a state program, in lieu of a federal program, in states which are authorized to implement these provisions.

(b) It is in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to this chapter, to authorize the state to implement the provisions of Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, including any acts amending or supplementing Subchapter IX and any federal regulations and guidelines adopted pursuant to Subchapter IX.

25280.6. Responsibility of owner and operator. Either the owner or operator of an underground storage tank may comply with the requirements of this chapter that apply to the owner or operator of an underground storage tank. Both the owner and the operator of an underground storage tank are responsible for complying with this chapter and if an underground storage tank is not in compliance with this chapter, both the owner and the operator of that underground storage tank are in violation of that requirement.

25281. Definitions. For purposes of this chapter, the following definitions apply:

(a) “Automatic line leak detector” means any method of leak detection, as determined in regulations adopted by the board, that alerts the owner or operator of an underground storage tank to the presence of a leak. “Automatic line leak detector” includes, but is not limited to, any device or

mechanism that alerts the owner or operator of an underground storage tank to the presence of a leak by restricting or shutting off the flow of a hazardous substance through piping, or by triggering an audible or visual alarm, and that detects leaks of three gallons or more per hour at 10 pounds per square inch line pressure within one hour.

(b) “Board” means the State Water Resources Control Board. “Regional board” means a California regional water quality control board.

(c) “Compatible” means the ability of two or more substances to maintain their respective physical and chemical properties upon contact with one another for the design life of the tank system under conditions likely to be encountered in the tank system.

(d) (1) “Certified Unified Program Agency” or “CUPA” means the agency certified by the Secretary for Environmental Protection to implement the unified program specified in Chapter 6.11 (commencing with Section 25404) within a jurisdiction.

(2) “Participating Agency” or “PA” means an agency that has a written agreement with the CUPA pursuant to subdivision (d) of Section 25404.3, and is approved by the secretary to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404, in accordance with Sections 25404.1 and 25404.2.

(3) “Unified Program Agency” or “UPA” means the CUPA, or its participating agencies to the extent each PA has been designated by the CUPA, pursuant to a written agreement, to implement or enforce the unified program element specified in paragraph (3) of subdivision (c) of Section 25404. For purposes of this chapter, a UPA has the responsibility and authority, to the extent provided by this chapter and Sections 25404.1 and 25404.2, to implement and enforce only those requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 and the regulations adopted to implement those requirements. Except as provided in Section 25296.09, after a CUPA has been certified by the secretary, the UPA shall be the only local agency authorized to enforce the requirements of this chapter listed in paragraph (3) of subdivision (c) of Section 25404 within the jurisdiction of the CUPA. This paragraph shall not be construed to limit the authority or responsibility granted to the board and the regional boards by this chapter to implement and enforce this chapter and the regulations adopted pursuant to this chapter.

(e) “Department” means the Department of Toxic Substances Control.

(f) “Facility” means any one, or combination of, underground storage tanks used by a single business entity at a single location or site.

(g) “Federal act” means Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, as added by the Hazardous and Solid Waste Amendments of 1984 (P.L. 98-616), or as it may subsequently be amended or supplemented.

(h) “Hazardous substance” means either of the following:

(1) All of the following liquid and solid substances, unless the department, in consultation with the board, determines that the substance could not adversely affect the quality of the waters of the state:

(A) Substances on the list prepared by the Director of Industrial Relations pursuant to Section 6382 of the Labor Code.

(B) Hazardous substances, as defined in Section 25316.

(C) Any substance or material that is classified by the National Fire Protection Association (NFPA) as a flammable liquid, a class II combustible liquid, or a class III-A combustible liquid.

(2) Any regulated substance, as defined in subsection (2) of Section 6991 of Title 42 of the United States Code, as that section reads on January 1, 1989, or as it may subsequently be amended or supplemented.

(i) “Local agency” means the local agency authorized, pursuant to Section 25283, to implement this chapter.

(j) “Operator” means any person in control of, or having daily responsibility for, the daily operation of an underground storage tank system.

(k) “Owner” means the owner of an underground storage tank.

(l) “Person” means an individual, trust, firm, joint stock company, corporation, including a government corporation, partnership, limited liability company, or association. “Person” also includes any city, county, district, the state, another state of the United States, any department or agency of this state or another state, or the United States to the extent authorized by federal law.

(m) “Pipe” means any pipeline or system of pipelines that is used in connection with the storage of hazardous substances and that is not intended to transport hazardous substances in interstate or intrastate commerce or to transfer hazardous materials in bulk to or from a marine vessel.

(n) “Primary containment” means the first level of containment, such as the portion of a tank that comes into immediate contact on its inner surface with the hazardous substance being contained.

(o) “Product tight” means impervious to the substance that is contained, or is to be contained, so as to prevent the seepage of the substance from the containment.

(p) “Release” means any spilling, leaking, emitting, discharging, escaping, leaching, or disposing from an underground storage tank into or on the waters of the state, the land, or the subsurface soils.

(q) “Secondary containment” means the level of containment external to, and separate from, the primary containment.

(r) “Single walled” means construction with walls made of only one thickness of material. For the purposes of this chapter, laminated, coated, or clad materials are considered single walled.

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(s) “Special inspector” means a professional engineer, registered pursuant to Chapter 7 (commencing with Section 6700) of Division 3 of the Business and Professions Code, who is qualified to attest, at a minimum, to structural soundness, seismic safety, the compatibility of construction materials with contents, cathodic protection, and the mechanical compatibility of the structural elements of underground storage tanks.

(t) “Storage” or “store” means the containment, handling, or treatment of hazardous substances, either on a temporary basis or for a period of years. “Storage” or “store” does not include the storage of hazardous wastes in an underground storage tank if the person operating the tank has been issued a hazardous waste facilities permit by the department pursuant to Section 25200 or granted interim status under Section 25200.5.

(u) “Tank” means a stationary device designed to contain an accumulation of hazardous substances which is constructed primarily of nonearthen materials, including, but not limited to, wood, concrete, steel, or plastic that provides structural support.

(v) “Tank integrity test” means a test method capable of detecting an unauthorized release from an underground storage tank consistent with the minimum standards adopted by the board.

(w) “Tank tester” means an individual who performs tank integrity tests on underground storage tanks.

(x) “Unauthorized release” means any release of any hazardous substance that does not conform to this chapter, including an unauthorized release specified in Section 25295.5.

(y) (1) “Underground storage tank” means any one or combination of tanks, including pipes connected thereto, that is used for the storage of hazardous substances and that is substantially or totally beneath the surface of the ground. “Underground storage tank” does not include any of the following:

(A) A tank with a capacity of 1,100 gallons or less that is located on a farm and that stores motor vehicle fuel used primarily for agricultural purposes and not for resale.

(B) A tank that is located on a farm or at the residence of a person, that has a capacity of 1,100 gallons or less, and that stores home heating oil for consumptive use on the premises where stored.

(C) Structures, such as sumps, separators, storm drains, catch basins, oil field gathering lines, refinery pipelines, lagoons, evaporation ponds, well cellars, separation sumps, lined and unlined pits, sumps and lagoons. A sump that is a part of a monitoring system required under Section 25290.1, 25290.2, 25291, or 25292 and sumps or other structures defined as underground storage tanks under the federal act are not exempted by this subparagraph.

(D) A tank holding hydraulic fluid for a closed loop mechanical system that uses compressed air or hydraulic fluid to operate lifts, elevators, and other similar devices.

(2) Structures identified in subparagraphs (C) and (D) of paragraph (1) may be regulated by the board and any regional board pursuant to the Porter-Cologne Water Quality Control Act (Division 7 (commencing with Section 13000) of the Water Code) to ensure that they do not pose a threat to water quality.

(z) “Underground tank system” or “tank system” means an underground storage tank, connected piping, ancillary equipment, and containment system, if any.

(aa) (1) “Unified program facility” means all contiguous land and structures, other appurtenances, and improvements on the land that are subject to the requirements of paragraph (3) of subdivision (c) of Section 25404.

(2) “Unified program facility permit” means a permit issued pursuant to Chapter 6.11 (commencing with Section 25404), and that encompasses the permitting requirements of Section 25284.

(3) “Permit” means a permit issued pursuant to Section 25284 or a unified program facility permit as defined in paragraph (2).

25281.5. “Pipe” defined; exclusions. (a) Notwithstanding subdivision (m) of Section 25281, for purposes of this chapter “pipe” means all parts of any pipeline or system of pipelines, used in connection with the storage of hazardous substances, including, but not limited to, valves and other appurtenances connected to the pipe, pumping units, fabricated assemblies associated with pumping units, and metering and delivery stations and fabricated assemblies therein, but does not include any of the following:

(1) An interstate pipeline subject to Part 195 (commencing with Section 195.0) of Subchapter D of Chapter 1 of Title 49 of the Code of Federal Regulations.

(2) An intrastate pipeline subject to Chapter 5.5 (commencing with Section 51010) of Part 1 of Division 1 of Title 5 of the Government Code.

(3) Unburied delivery hoses, vapor recovery hoses, and nozzles that are subject to unobstructed visual inspection for leakage.

(4) Vent lines, vapor recovery lines, and fill pipes which are designed to prevent, and do not hold, standing fluid in the pipes or lines.

(b) In addition to the exclusions specified in subdivision (y) of Section 25281, “underground storage tank” does not include any of the following:

(1) Vent lines, vapor recovery lines, and fill pipes that are designed to prevent, and do not hold, standing fluid in the pipes or lines.

(2) Unburied fuel delivery piping at marinas if the owner or operator conducts daily visual inspections of the piping and maintains a log of inspection results for review by the local agency. The exclusion provided by this paragraph shall not be applicable if the board adopts regulations pursuant

to Section 25299.3 that address the design, construction, upgrade, and monitoring of unburied fuel delivery piping at marinas.

(3) Unburied fuel piping connected to an emergency generator tank system, if the owner or operator conducts visual inspections of the piping each time the tank system is operated, but no less than monthly, and maintains a log of inspection results for review by the local agency. The exclusion provided by this paragraph does not apply if the board adopts regulations pursuant to Section 25299.3 that address the design, construction, upgrade, and monitoring of unburied fuel supply and return piping connected to emergency generator tank systems.

(c) For purposes of this chapter, “emergency generator tank system” means an underground storage tank system that provides power supply in the event of a commercial power failure, stores diesel fuel, and is used solely in connection with an emergency system, legally required standby system, or optional standby system, as defined in Articles 700, 701, and 702 of the National Electrical Code of the National Fire Protection Association.

25282. Master list of hazardous substances. (a) The department shall compile a comprehensive master list of hazardous substances. The master list shall be made available to the public and mailed to each local agency no later than June 30, 1984, notwithstanding any other provision of law, including Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code. Local agencies and owners or operators of underground storage tanks shall use the master list or, when adopted, the revised list adopted pursuant to subdivision (b), to determine which underground storage tanks require permits pursuant to this chapter. Hazardous substances included on the list may be denominated by scientific, common, trade, or brand names.

(b) The department may revise, when appropriate, the master list of all the hazardous substances specified in subdivision (a). The revised list of hazardous substances shall be prepared and adopted, and may be further revised, in accordance with Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code.

25283. Implementation of chapter; notice by city of assumption of responsibility; proration of revenue. (a) (1) This chapter shall be implemented, pursuant to the regulations adopted by the board, by one of the following:

(A) If there is a CUPA, the unified program agency.

(B) If there is no CUPA, by one of the following:

(i) Before January 1, 1997, the county or a city, pursuant to paragraph (2).

(ii) On and after January 1, 1997, the agency authorized pursuant to subdivision (f) of Section 25404.3.

(2) (A) Before January 1, 1997, if there is no CUPA, a city may, by ordinance, assume responsibility for the implementation of this chapter

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pursuant to the regulations adopted by the board and, if so, shall have exclusive jurisdiction within the boundary of the city for the purposes of carrying out this chapter. The ordinance adopted by the city shall comply with this chapter, applicable federal laws, and the regulations and guidelines adopted pursuant thereto. If there is no CUPA, a city which, prior to January 1, 1990, was exempt from implementing this chapter, has the exclusive jurisdiction, within its boundaries, for the purpose of implementing this chapter.

(B) No city may assume responsibility for implementation of this chapter unless it has notified the county, on or before July 1, 1990, of its intentions to assume responsibility for implementation of this chapter.

(C) A city's authorization for implementing this chapter pursuant to this paragraph shall remain in effect only until a CUPA is certified, or until January 1, 1997, whichever is earlier. On and after January 1, 1997, the agency responsible for administering and enforcing this chapter shall be the agency so authorized pursuant to subdivision (f) of Section 25404.3.

(b) If there is no CUPA, the county and any city that assumes responsibility pursuant to paragraph (2) of subdivision (a) shall designate a department, office, or other agency of that county or city, as the case may be, as the local agency responsible for administering and enforcing this chapter, pursuant to subdivision (a). A city that assumes responsibility for implementation of this chapter pursuant to paragraph (2) of subdivision (a) shall designate the agency which has responsibility for implementing Chapter 6.95 (commencing with Section 25500) as the local agency responsible for administering and enforcing this chapter. A designation pursuant to this subdivision shall remain in effect only until a CUPA is certified or until January 1, 1997, whichever is earlier. On and after January 1, 1997, the agency responsible for administering and enforcing this chapter shall be the agency so authorized pursuant to subdivision (f) of Section 25404.3.

(c) If the agency which receives certification as a certified unified program agency subsequently withdraws or is decertified before January 1, 1997, the local agency responsible for administering and enforcing this chapter prior to the certification of the CUPA shall assume responsibility for administering and enforcing this chapter until a successor CUPA is certified or until January 1, 1997, whichever is earlier.

(d) Revenue from fees collected by the county pursuant to this chapter shall be prorated between the city and county based upon when the city assumes responsibility for implementation of this chapter.

25283.1. Joint powers agreement. This chapter does not prohibit any county from entering into a joint powers agreement with other counties for the purposes of enforcing this chapter.

25283.5. Exemptions from chapter; underground storage tanks; criteria. (a) An underground storage tank that meets all of the following criteria is exempt from the requirements of this chapter:

(1) All exterior surfaces of the tank, including connected piping, and the floor directly beneath the tank, can be monitored by direct viewing.

(2) The structure in which the tank is located is constructed in such a manner that the structure provides for secondary containment of the contents of the tank, as determined by the local agency designated pursuant to Section 25283.

(3) The owner or operator of the underground storage tank conducts weekly inspections of the tank and maintains a log of inspection results for review by the local agency, designated pursuant to Section 25283, as requested by the local agency.

(4) The local agency designated pursuant to Section 25283 determines without objection from the board that the underground storage tank meets requirements that are equal to or more stringent than those imposed by this chapter.

(b) Nothing in this section prohibits a local fire chief or an enforcement agency, as defined in Section 16006, from enforcing the applicable provisions of the local or state fire, building, or electrical codes.

25284. Permit to own or operate underground storage tank; transferred permits. (a) (1) Except as provided in subdivision (c), no person may own or operate an underground storage tank unless a permit for its operation has been issued by the local agency to the owner or operator of the tank, or a unified program facility permit has been issued by the local agency to the owner or operator of the unified program facility on which the tank is located.

(2) If the operator is not the owner of the tank, or if the permit is issued to a person other than the owner or operator of the tank, the permittee shall ensure that both the owner and the operator of the tank are provided with a copy of the permit.

(3) If the permit is issued to a person other than the operator of the tank, that person shall do all of the following:

(A) Enter into a written agreement with the operator of the tank to monitor the tank system as set forth in the permit.

(B) Provide the operator with a copy or summary of Section 25299 in the form that the board specifies by regulation.

(C) Notify the local agency of any change of operator.

(b) Each local agency shall prepare a form that provides for the acceptance of the obligations of a transferred permit by any person who is to assume the ownership of an underground storage tank from the previous owner and is to be transferred the permit to operate the tank. That person shall complete the form accepting the obligations of the permit and submit the completed form to the local agency within 30 days from the date that the

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ownership of the underground storage tank is to be transferred. A local agency may review and modify, or terminate, the transfer of the permit to operate the underground storage tank, pursuant to the criteria specified in subdivision (a) of Section 25295, upon receiving the completed form.

(c) Any person assuming ownership of an underground storage tank used for the storage of hazardous substances for which a valid operating permit has been issued shall have 30 days from the date of assumption of ownership to apply for an operating permit pursuant to Section 25286 or, if accepting a transferred permit, shall submit to the local agency the completed form accepting the obligations of the transferred permit, as specified in subdivision (b). During the period from the date of application until the permit is issued or refused, the person shall not be held to be in violation of this section.

(d) A permit issued pursuant to this section shall apply and require compliance with all applicable regulations adopted by the board pursuant to Section 25299.3.

25285. Permit; term; inspection; fee and surcharge. (a) Except as provided in Section 25285.1, a permit to operate issued by the local agency pursuant to Section 25284 shall be effective for five years. This subdivision does not apply to unified program facility permits.

(b) A local agency shall not issue or renew a permit to operate an underground storage tank if the local agency inspects the tank and determines that the tank does not comply with this chapter.

(c) Except as provided in Section 25404.5, a local agency shall not issue or renew a permit to operate an underground storage tank to any person who has not paid the fee and surcharge required by Section 25287.

25285.1. Revocation or modification of permit; justifiable reasons. (a) A local agency may revoke or modify a permit issued pursuant to Section 25284 for cause, including, but not limited to, any of the following:

- (1) Violation of any of the terms or conditions of the permit.
- (2) Obtaining the permit by misrepresentation or intentional failure to fully disclose all relevant facts.
- (3) A change in any condition that requires modification or termination of the operation of the underground storage tank.

(b) The local agency shall revoke the permit of an underground storage tank issued pursuant to Section 25284 if the owner or operator is not in compliance with Article 3 (commencing with Section 25299.30) of Chapter 6.75 on the date three months after the date on which the owner or operator of the tank first becomes subject to Article 3 (commencing with Section 25299.30) of Chapter 6.75.

25286. Application for permit or renewal; form; fee; conditions; copies; contents; storage of unlisted substances. (a) An application for a permit to operate an underground storage tank, or for renewal of the permit,

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shall be made, by the owner or operator of the tank, or, if there is a CUPA, by the owner or operator of the unified program facility on which the tank is located, on a standardized form provided by the local agency. Except as provided in Section 25404.5, the permit shall be accompanied by the appropriate fee, as specified in Section 25287. As a condition of any permit to operate an underground storage tank, the permittee shall notify the local agency, within the period determined by the local agency, of any changes in the usage of the underground storage tank, including the storage of new hazardous substances, changes in monitoring procedures, and if there has been any unauthorized release from the underground storage tank, as specified in Section 25294 or 25295.

(b) (1) The local agencies shall provide the designee of the board with copies of the completed permit applications, using forms, an industry standard computer readable magnetic tape, diskette, or any other form in a format acceptable to the board.

(2) The board may enter into a contract with any designee of the board for the purpose of administering the underground storage tank permit data base, and reimburse the designee of the board, upon appropriation by the Legislature, for any costs determined by the board to have been necessary and incurred pursuant to this section, including programming, training, maintenance, actual data processing expenditures, and any incidental costs of the operation of the data base related to the permitting of underground storage tanks. In selecting a contractor pursuant to this paragraph, the board shall consider the fiscal impact upon local agencies of converting to the data base systems and procedures employed by the contractor. The permit application information required in subdivision (c) shall be stored in the data base. The designee of the board shall submit to the board a quarterly report, including any information required by the board concerning permit application data. Each local agency shall provide the designee of the board with a copy of the completed permit application within 30 days after taking final action on the application.

(c) The application form shall include, but not be limited to, requests for the following information:

(1) A description of the age, size, type, location, uses, and construction of the underground storage tank or tanks.

(2) A list of all the hazardous substances which are or will be stored in the underground storage tank or tanks, specifying the hazardous substances for each underground storage tank.

(3) A description of the monitoring program for the underground tank system.

(4) The name and address of the person, firm, or corporation which owns the underground tank system and, if different, the name and address of the person who operates the underground tank system.

(5) The address of the facility at which the underground tank system is located.

(6) The name of the person making the application.

(7) The name and 24-hour phone number of the contact person in the event of an emergency involving the facility.

(8) If the owner or operator of the underground storage tank or the owner or operator of the unified program facility on which the tank is located is a public agency, the application shall include the name of the supervisor of the division, section, or office which owns or operates the tank or owns or operates the unified program facility.

(9) The State Board of Equalization registration number issued to the owner of the tank pursuant to Section 50108.1 of the Revenue and Taxation Code.

(10) If applicable, the name and address of the owner and, if different, the operator of the unified program facility on which the tank is located.

(d) If an underground storage tank is used to store a hazardous substance which is not listed in the application, as required by paragraph (2) of subdivision (c), the permittee shall apply for a new or amended permit within 30 days after commencing the storage of that hazardous substance.

25290. Trade secrets; definition; disclosure; identification of information on application for permit. (a) "Trade secrets," as used in this chapter, includes, but is not limited to, any formula, plan, pattern, process, tool, mechanism, compound, procedure, production data, or compilation of information which is not patented, which is known only to certain individuals within a commercial concern who are using it to fabricate, produce, or compound an article of trade or a service having commercial value, and which gives its user an opportunity to obtain a business advantage over competitors who do not know or use it.

(b) The board or a local agency may disclose trade secrets received by the board or the local agency pursuant to this chapter to authorize representatives or other governmental agencies only in connection with the board's or local agency's responsibilities pursuant to this chapter. The board and the local agency shall establish procedures to ensure that these trade secrets are utilized only in connection with these responsibilities and are not otherwise disseminated without the consent of the person who provided the information to the board or the local agency.

(c) Any person providing information pursuant to Section 25286 shall, at the time of its submission, identify all information which the person believes is a trade secret. Any information or record not identified as a trade secret is available to the public, unless exempted from disclosure by other provisions of law.

(d) Where the local agency, by ordinance, provides an alternative to the listing of a substance which is a trade secret, the person storing that substance shall provide the identification of the material directly to the board pursuant to this section.

25290.1. **Performance standards.** (a) Notwithstanding subdivision (o) of Section 25281, for purposes of this section, “product tight” means impervious to the liquid and vapor of the substance that is contained, or is to be contained, so as to prevent the seepage of the substance from the containment.

(b) Notwithstanding Sections 25290.2 and 25291, every underground storage tank installed on or after July 1, 2004, shall meet the requirements of this section.

(c) The underground storage tank shall be designed and constructed to provide primary and secondary levels of containment of the hazardous substances stored in it in accordance with the following performance standards:

(1) Primary containment shall be constructed, operated, and maintained product tight and compatible with the stored product.

(2) Secondary containment shall be constructed, operated, and maintained product tight. The secondary containment shall also be constructed, operated, and maintained in a manner to prevent structural weakening as a result of contact with any hazardous substances released from the primary containment, and also shall be capable of storing the hazardous substances for the maximum anticipated period of time necessary for the recovery of any released hazardous substance.

(3) Secondary containment shall be constructed, operated, and maintained to prevent any water intrusion into the system by precipitation, infiltration, or surface runoff.

(4) In the case of an installation with one primary tank, the secondary containment shall be large enough to contain at least 100 percent of the volume of the primary tank.

(5) In the case of multiple primary tanks, the secondary containment shall be large enough to contain 150 percent of the volume of the largest primary tank placed in it, or 10 percent of the aggregate internal volume of all primary tanks, whichever is greater.

(d) The underground tank system shall be designed and constructed with a continuous monitoring system capable of detecting the entry of the liquid- or vapor-phase of the hazardous substance stored in the primary containment into the secondary containment and capable of detecting water intrusion into the secondary containment.

(e) The interstitial space of the underground storage tank shall be maintained under constant vacuum or pressure such that a breach in the primary or secondary containment is detected before the liquid or vapor phase of the hazardous substance stored in the underground storage tank is

released into the environment. The use of interstitial liquid level measurement methods satisfies the requirements of this subdivision.

(f) The underground storage tank shall be provided with equipment to prevent spills and overfills from the primary tank.

(g) If different substances are stored in the same tank and in combination may cause a fire or explosion, or the production of flammable, toxic, or poisonous gas, or the deterioration of a primary or secondary container, those substances shall be separated in both the primary and secondary containment so as to avoid potential intermixing.

(h) Underground pressurized piping that conveys a hazardous substance shall be equipped with an automatic line leak detector.

(i) Before the underground storage tank is covered, enclosed, or placed in use, the standard installation testing requirements for underground storage systems specified in Section 2.4 of the Flammable and Combustible Liquids Code, adopted by the National Fire Protection Association (NFPA 30), as amended and published in the respective edition of the Uniform Fire Code, shall be followed.

(j) Before the underground storage tank is placed in use, the underground storage tank shall be tested after installation using one of the following methods to demonstrate that the tank is product tight:

(1) Enhanced leak detection.

(2) An inert gas pressure test that has been certified by a third party and approved by the board.

(3) A test method deemed equivalent to enhanced leak detection or an inert gas pressure test by the board in regulations adopted pursuant to this chapter. An underground storage tank installed and tested in accordance with this subdivision is exempt from the requirements of Section 25292.5.

(k) Notwithstanding Section 25281.5, for any system installed to meet the requirements of this section, those portions of vent lines, vapor recovery lines, and fill pipes that are beneath the surface of the ground are "pipe" as the term is defined in subdivision (m) of Section 25281, and therefore part of the underground storage tank system.

25290.1.1. **Notice to comply.** (a) (1) On the effective date of the act adding this section and for 179 days thereafter, a local agency shall only issue a notice to comply pursuant to this section to an owner or operator of an underground storage tank subject to Section 25290.1 that does not maintain the vacuum or pressure that is required by subdivision (e) of Section 25290.1, except as otherwise provided in this section.

(2) If the violation described in paragraph (1) occurs on or after the 180th day from the effective date of the act adding this chapter, the local agency may take any enforcement action authorized by this chapter.

(b) A local agency shall issue the notice to comply alleging a violation described in paragraph (1) of subdivision (a) by presenting a notice to comply to the owner or operator in writing, which meets all of the following requirements:

(1) The notice to comply shall be written in the course of conducting an inspection by an authorized representative of the local agency.

(2) A copy of the notice to comply shall be presented to a person who is an owner, operator, employee, or representative of the facility being inspected at the time that the notice to comply is written.

(3) The notice to comply shall clearly state that a violation described in paragraph (1) of subdivision (a) was discovered, a means by which compliance may be achieved, and a time limit in which to comply, which shall not exceed 60 days. The local agency may provide a one-time extension of the time limit for compliance specified in the notice, not to exceed an additional 60 days, if the local agency determines that an extension is necessary to ensure compliance.

(4) The notice to comply shall contain a statement that the inspected facility may be subject to reinspection at any time.

(c) (1) On or before five working days after the date the violation described in paragraph (1) of subdivision (a) is corrected, the person cited in the notice to comply or an authorized representative of that person shall sign the notice to comply, shall certify that the violation has been corrected, and shall return the notice to the local agency.

(2) A false certification submitted pursuant to paragraph (1) that the violation is corrected is punishable as a misdemeanor.

(3) The effective date of the certification that the violation has been corrected shall be the date that the certification is postmarked.

(d) Notwithstanding subdivision (a), if a person fails to correct the violation within the prescribed period in the notice, the local agency may take any enforcement action authorized by this chapter.

(e) This section does not do any of the following:

(1) Prevent the reinspection of a facility to ensure compliance.

(2) Prevent a local agency, on a case-by-case basis, from requiring a person subject to a notice to comply to submit reasonable and necessary documentation to support a claim of compliance by the person.

(3) Restrict the power of a city attorney, district attorney, county counsel, or the Attorney General to bring, in the name of the people of California, any criminal proceeding otherwise authorized by law.

(4) Prevent the local agency, state board, or regional board, from cooperating with, or participating in, a proceeding specified in paragraph (3).

(f) Notwithstanding subdivision (a), if the violation described in paragraph (1) of subdivision (a) is intentional or occurs as the result of gross negligence, the local agency may take any enforcement action authorized by this chapter.

25290.1.2. **Equipment certification.** (a) The board and the State Air Resources Board, under the direction of the California Environmental Protection Agency, shall certify to the best of their knowledge, that the equipment that meets the requirements of Section 94011 of Title 17 of the California Code of Regulations for enhanced vapor recovery systems at gasoline dispensing facilities, as implemented by the State Air Resources Board, also meets the requirements of this chapter. The board and the State Air Resources Board shall make this certification collaboratively, using existing resources.

(b) The board and the State Air Resources Board, under the direction of the California Environmental Protection Agency, when making the certification specified in subdivision (a), shall consult with interested parties, including local implementing agencies, underground storage tank system owners and operators, equipment manufacturers, underground storage tank system installers, and environmental organizations.

(c) The board and the State Air Resources Board shall post the certification and any supporting documentation on their Web sites.

(d) This section shall be implemented by the executive directors of the board and of the State Air Resources Board, or by their designees.

25290.2. Product tight. (a) Notwithstanding subdivision (o) of Section 25281, for purposes of this section, “product tight” means impervious to the liquid and vapor of the substance that is contained, or is to be contained, so as to prevent the seepage of the substance from the containment.

(b) Notwithstanding Section 25291, every underground storage tank installed on or after July 1, 2003, and before July 1, 2004, shall meet the requirements of this section.

(c) The underground storage tank shall be designed and constructed to provide primary and secondary levels of containment of the hazardous substances stored in it in accordance with the following performance standards:

(1) Primary containment shall be product tight and compatible with stored product.

(2) Secondary containment shall be product tight and constructed to prevent structural weakening as a result of contact with any hazardous substances released from the primary containment, and also shall be capable of storing the hazardous substances for the maximum anticipated period of time necessary for the recovery of any released hazardous substance.

(3) Secondary containment shall be constructed to prevent any water intrusion into the system by precipitation, infiltration, or surface runoff.

(4) In the case of an installation with one primary tank, the secondary containment shall be large enough to contain at least 100 percent of the volume of the primary tank.

(5) In the case of multiple primary tanks, the secondary containment shall be large enough to contain 150 percent of the volume of the largest primary tank placed in it, or 10 percent of the aggregate internal volume of all primary tanks, whichever is greater.

(d) The underground tank system shall be designed and constructed with a continuous monitoring system capable of detecting the entry of the hazardous substance stored in the primary containment into the secondary containment and capable of detecting water intrusion into the secondary containment.

(e) The underground storage tank shall be provided with equipment to prevent spills and overfills from the primary tank.

(f) If different substances are stored in the same tank and in combination may cause a fire or explosion, or the production of flammable, toxic, or poisonous gas, or the deterioration of a primary or secondary container, those substances shall be separated in both the primary and secondary containment so as to avoid potential intermixing.

(g) Underground pressurized piping that conveys a hazardous substance shall be equipped with an automatic line leak detector and shall be tightness tested annually.

(h) Before the underground storage tank is covered, enclosed, or placed in use, the standard installation testing requirements for underground storage systems specified in Section 2.4 of the Flammable and Combustible Liquids Code, adopted by the National Fire Protection Association (NFPA 30), as amended and published in the respective edition of the Uniform Fire Code, shall be followed.

(i) Before the underground storage tank is placed in use, the underground storage tank shall be tested after installation using one of the following methods to demonstrate that the tank is product tight:

(1) Enhanced leak detection.

(2) An inert gas pressure test that has been certified by a third party and approved by the board.

(3) A test method deemed equivalent to enhanced leak detection or an inert gas pressure test by the board in regulations adopted pursuant to this chapter. An underground storage tank installed and tested in accordance with this subdivision is exempt from the requirements of Section 25292.5.

(j) Notwithstanding Section 25281.5, for any system installed to meet the requirements of this section, those portions of vent lines, vapor recovery

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lines, and fill pipes that are beneath the surface of the ground are “pipe” as the term is defined in subdivision (m) of Section 25281, and therefore part of the underground storage tank system.

25296.09. Santa Clara Valley Water District. (a) (1) If the board enters into an agreement with a local agency and the Santa Clara Valley Water District pursuant to subdivision (j) of Section 25297.1, the Santa Clara Valley Water District shall have the same authority and responsibility as a local agency for purposes of Sections 25296.10 to 25297.2, inclusive, and for purposes of Sections 25299.36, 25299.38, 25299.39.2, 25299.39.3, 25299.51, 25299.53, and 25299.57.

(2) Paragraph (1) shall remain operative only until June 30, 2005.

(3) The inoperation of paragraph (1) does not affect the validity of any action taken by the Santa Clara Valley Water District before June 30, 2005, and does not provide a defense for an owner, operator, or other responsible party who fails to comply with that action.

(4) Nothing in this section implies that the Santa Clara Valley Water District has CUPA authority other than authority for the local oversight program in accordance with paragraph (1).

(b) (1) The Legislature hereby finds and declares that, beginning in 1988, and continuing each year since that date, the Santa Clara Valley Water District has had a role in implementing the requirements of the provisions listed in subdivision (a).

(2) The Legislature hereby finds and declares that the funding provided by the state to the Santa Clara Valley Water District for the work described in paragraph (1) is hereby ratified.

(c) (1) Any action taken by the Santa Clara Valley Water District that a local agency is otherwise authorized to take pursuant to Sections 25296.10 to 25297.2, inclusive, and Sections 25299.36, 25299.38, 25299.39.2, 25299.39.3, 25299.51, 25299.53, and 25299.57, and that was taken by the Santa Clara Valley Water District on and after January 1, 1988, and continuing on and before January 1, 2005, or until the effective date of an agreement entered into pursuant to subdivision (j) of Section 25297.1, whichever date occurs first, is hereby ratified as having been taken pursuant to this chapter and Chapter 6.75 (commencing with Section 25299.10). However, this ratification applies only to an action that would be valid only if an agreement pursuant to subdivision (j) of Section 25297.1 had been in effect at the time of the action and that otherwise complies with applicable law.

(2) This subdivision does not apply to any action taken by the Santa Clara Valley Water District that is the subject of a civil action pending on June 12, 2003.

25299.01. **Injunctions; restraining orders or other orders.** When any person has engaged in, is engaged in, or is about to engage in any acts or practices which violate this chapter, or Chapter 6.75 (commencing with Section 25299.10) or any rule, regulation, permit, standard, requirement, or order issued, adopted, or executed pursuant to this chapter or Chapter 6.75 (commencing with Section 25299.10), the city attorney of the city in which the acts or practices occur, occurred, or will occur, the district attorney of the county in which the acts or practices occur, occurred, or will occur, or the Attorney General may apply to the superior court for any order enjoining these acts or practices, or for an order directing compliance. The court may grant a permanent or temporary injunction, restraining order, or other order.

25299.02. **Civil actions; joinder or consolidation.** Every civil action brought under this chapter shall be brought by the city attorney, the district attorney, or the Attorney General in the name of the people of the State of California, and any actions relating to the same violations may be joined or consolidated.

25299.03. **County in which civil action is brought.** Any civil action brought pursuant to this chapter shall be brought in the county in which the violation occurred, the county in which the principal office of the defendant is located, or the county in which the Attorney General has an office nearest to the county in which the principal office of the defendants, or any of them, in this state is located.

25299.04. **Temporary restraining order, preliminary or permanent injunction; proofs.** In any civil action brought pursuant to this chapter in which a temporary restraining order, preliminary injunction, or permanent injunction is sought, it is not necessary to allege or prove at any state of the proceeding that irreparable damage will occur should the temporary restraining order, preliminary injunction, or permanent injunction not be issued or that the remedy at law is inadequate. The temporary restraining order, preliminary injunction, or permanent injunction shall be issued without these allegations and without this proof.

25299.5. **Construction of chapter.** (a) This chapter shall be construed to assure consistency with the requirements for state programs implementing the federal act.

(b) This chapter shall not be construed to limit or abridge the powers and duties granted to the department by Chapter 6.5 (commencing with Section 25100) and Chapter 6.8 (commencing with Section 25300) or to the board and each regional board by Division 7 (commencing with Section 13000) of the Water Code.

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CHAPTER 6.75. PETROLEUM UNDERGROUND STORAGE TANK CLEANUP

(Note: For history of any of these sections see Health and Safety Code, annotated, published by Deering or West.)

- Article 1. Findings and Declarations. § 25299.10.
- 2. Definitions. §§ 25299.11-25299.25.
- 3. Financial Responsibility. §§ 25299.30-25299.34.
- 4. Corrective Action. §§ 25299.36-25299.39.3.
- 5. Fees. §§ 25299.40-25299.43.
- 6. Underground Storage Tank Cleanup Fund. §§ 25299.50-25299.63.
- 6.5. Performance-Based Contract. §§ 25299.64-25299.66.
- 7. Cost Recovery, Enforcement, and Administration. §§ 25299.70-25299.79.
- 9. Sunset Provision. § 25299.81.
- 13. Drinking Water Treatment and Research. §§ 25299.99.1-25299.99.3.

Article 1. Findings and Declarations

§ 25299.10. Findings and declarations.

25299.10. **Findings and declarations.** (a) This chapter shall be known, and may be cited, as the Barry Keene Underground Storage Tank Cleanup Trust Fund Act of 1989.

(b) The Legislature hereby finds and declares all of the following:

(1) In order to help ensure an efficient petroleum underground storage tank cleanup program that adequately protects public health and safety and the environment and provides for the rapid distribution of cleanup funds that will assist the state's recovery, it is in the best interest of the public that the board devote maximum effort to the expedited processing and payment of all claims filed pursuant to Sections 25299.57 and 25299.58.

(2) It is estimated that approximately 90 percent of the underground storage tanks in the state contain petroleum and the remaining 10 percent of the tanks contain various chemical constituents.

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(3) Although the exact extent of the problem is unknown, it is thought that a significant number of the underground storage tanks containing petroleum in the state may be leaking.

(4) In recent years, owners or operators of underground storage tanks have been unable to obtain affordable environmental impairment liability insurance coverage to pay for corrective action or the obtainable coverage has been outside their financial means.

(5) There are long-term threats to public health and water quality if a comprehensive, uniform, and efficient corrective action program is not established.

(6) It is in the best interest of the health and safety of the people of the state to establish a fund to pay for corrective action where coverage is not available.

(7) A uniform, comprehensive, and efficient program establishing financial responsibility and corrective action requirements for leaking underground storage tanks containing petroleum will enable private commercial insurers to expand the availability and affordability of insurance coverage.

(8) An efficient program of establishing corrective action requirements and funds or insurance coverage should encourage corrective action to be taken in the first instance by the owner or operator of the leaking underground storage tank containing petroleum.

(9) Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code provides for regulation of underground storage tanks and allows underground storage tanks to be regulated pursuant to a state program, in lieu of a federal program, in states which are authorized to implement these provisions.

(10) It is in the interest of the people of the state, in order to avoid direct regulation by the federal government of persons already subject to regulation under state law pursuant to Chapter 6.7 (commencing with Section 25280), to authorize the state to implement the provisions of Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, including any acts amending or supplementing Subchapter IX and any federal regulations and guidelines adopted pursuant to Subchapter IX.

(11) It is in the public interest for the state to provide financial assistance to small businesses and farms which have limited financial resources, to ensure timely compliance with the law governing underground storage tanks, and to ensure the adequate protection of groundwater.

(12) Nothing in this chapter shall be construed as waiving any immunity provided the state or its departments and agencies by the United States Constitution.

Article 2. Definitions

- § 25299.11. Governing definitions.
- § 25299.11.5. “Adjudicative proceeding.”
- § 25299.12. “Bodily injury.”
- § 25299.13. “Claim.”
- § 25299.14. “Corrective action.”
- § 25299.15. “Environmental impairment liability insurance.”
- § 25299.16. “Federal act.”
- § 25299.17. “Fund.”
- § 25299.18. “MTBE.”
- § 25299.19. “Occurrence.”
- § 25299.20. “Operator.”
- § 25299.21. “Owner.”
- § 25299.22. “Petroleum.”
- § 25299.23. “Property damage.”
- § 25299.23.1. “Site.”
- § 25299.24. “Tank.”
- § 25299.25. “Board,” “regional board,” etc.

25299.11. **Governing definitions.** Unless the context indicates otherwise, the definitions in this article govern the construction of this chapter.

25299.11.5. **“Adjudicative proceeding.”** has the same meaning as defined in Section 11405.20 of the Government Code.

25299.12. **“Bodily injury.”** “Bodily injury” has the same meaning as used in Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code and the regulations adopted pursuant thereto.

25299.13. **“Claim.”** “Claim” means a submittal to the fund for the reimbursement of costs incurred due to an occurrence. A claim consists of several documents, including, but not limited to, the fund application, reimbursement requests, and verification documents.

25299.14. **“Corrective action.”** “Corrective action” includes, but is not limited to, evaluation and investigation of an unauthorized release, initial corrective actions measures, as specified in the federal act, and any actions necessary to investigate and remedy any residual effects remaining after the initial corrective action. Except as provided in the federal act, “corrective action” does not include actions to repair or replace an underground storage tank or its associated equipment.

25299.15. **“Environmental impairment liability insurance.”** “Environmental impairment liability insurance” means liability insurance against liability for bodily injury, as defined in Section 25299.12, and for property damage, as defined in Section 25299.22, arising from an occurrence, as defined in Section 25299.19.

25299.16. **“Federal act.”** “Federal act” means Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code, as added by the Hazardous and Solid Waste Amendments of

1984 (P.L. 98-616), or as it may subsequently be amended or supplemented, and the regulations adopted pursuant thereto.

25299.17. **“Fund.”** “Fund” means the Underground Storage Tank Cleanup Fund created pursuant to Section 25299.50.

25299.18. **“MTBE.”** “MTBE” means methyl tertiary-butyl ether.

25299.19. **“Occurrence.”** “Occurrence” means an accident, including continuous or repeated exposure to conditions, which results in an unauthorized release of petroleum from an underground storage tank. Unauthorized releases at the same site which require only a single site investigation shall be considered as one occurrence. An unauthorized release subsequent to a previous unauthorized release at the same site shall only be considered a separate occurrence if an initial site investigation has been completed for the prior unauthorized release.

25299.20. **“Operator.”** “Operator” means any person in control of, or having responsibility for, the daily operation of an underground storage tank containing petroleum. “Operator” includes any city, county, or district, or any agency or department thereof, but does not include the state or any agency or department thereof, or the federal government.

25299.21. **“Owner.”** “Owner” means the owner of an underground storage tank containing petroleum.

“Owner” includes any city, county, or district, or any agency or department thereof, but does not include the state or any agency or department thereof, or the federal government.

25299.22. **“Petroleum.”** “Petroleum” means crude oil, or any fraction thereof, which is liquid at standard conditions of temperature and pressure, which means at 60 degrees Fahrenheit and 14.7 pounds per square inch absolute.

25299.23. **“Property damage.”** “Property damage” has the same meaning as used in Subchapter IX (commencing with Section 6991) of Chapter 82 of Title 42 of the United States Code and the regulations adopted pursuant thereto.

25299.23.1. **“Site.”** “Site” means the parcel of real property at which an underground storage tank is located.

(b) If underground storage tanks are located at adjacent parcels of real property, the adjacent parcels together constitute one site if both of the following apply:

(1) The underground storage tanks are, or have been, operated by the same person.

(2) The adjacent parcels are under common ownership or control.

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(c) Notwithstanding subdivision (a), the board may consider a parcel of real property as consisting of multiple sites, corresponding to the number of distinct underground storage tank operations at the parcel, if the board makes both of the following findings:

(1) There is more than one underground storage tank located at the parcel.

(2) Each separately operated underground storage tank or group of underground storage tanks is not, and has not been, operated by a person who is operating or has operated another underground storage tank at the same parcel.

25299.24. **“Tank.”** “Tank,” “underground storage tank,” “underground tank system,” and “tank system” have the same meaning as defined in Chapter 6.7 (commencing with Section 25280), except that these terms mean only those tanks that contain only petroleum or, consistent with the federal act, a mixture of petroleum with de minimis quantities of other regulated substances.

25299.25. **“Board,” “regional board,” etc.** For purposes of this chapter, “board,” “regional board,” “local agency,” “person,” “unauthorized release,” and “facility” shall have the same meanings as defined in Section 25281. Any other term used in this chapter which is not defined by this article has the same meaning as defined in Section 25281.

Article 3. Financial Responsibility

§ 25299.30.	Financial responsibility.
§ 25299.31.	Evidence of financial responsibility.
§ 25299.32.	Level of financial responsibility.
§ 25299.33.	Financial responsibility; federal act; local agency.
§ 25299.34.	Guarantor liability limitation.

25299.30. **Financial responsibility.** Every owner and operator shall comply with Section 25299.31 at the time prescribed in the federal act for the establishment and maintaining of financial responsibility for taking corrective action and compensating third parties for bodily injury and property damage arising from operating an underground storage tank, or when the tank is first filled, for use, with petroleum.

25299.31. **Evidence of financial responsibility.** (a) Every owner and operator shall establish and maintain evidence of financial responsibility, as provided in this article, for taking corrective action and compensating third parties for bodily injury and property damage arising from operating an underground storage tank.

(b) If the owner and the operator are separate persons, either the owner or the operator shall demonstrate compliance with subdivision (a).

(c) An owner may comply with this article by entering into an agreement with the operator of the tank requiring the operator to demonstrate compliance with subdivision (a). However, both the owner and the operator

are in violation of subdivision (a) if evidence of financial responsibility is not established and maintained in accordance with this article.

25299.32. Level of financial responsibility. (a) (1) Claimants who meet the qualifications of paragraph (1) of subdivision (b) of Section 25299.52 shall be deemed in compliance with Section 25299.31 if the claimant is eligible for reimbursement from the fund pursuant to Section 25299.54 and subdivision (d) of Sections 25299.57 and 25299.58.

(2) For claimants who meet the qualifications of paragraph (2) or (3) of subdivision (b) of Section 25299.52, the level of financial responsibility required to be obtained pursuant to Section 25299.31 shall be at least five thousand dollars (\$5,000) for each occurrence and at least five thousand dollars (\$5,000) annual aggregate coverage for taking corrective action.

(3) For claimants who meet the qualifications of paragraph (4) of subdivision (b) of Section 25299.52, the level of financial responsibility required to be obtained pursuant to Section 25299.31 shall be at least ten thousand dollars (\$10,000) for each occurrence, and at least ten thousand dollars (\$10,000) annual aggregate coverage for taking corrective action.

(b) The level of financial responsibility required to be obtained pursuant to Section 25299.31 for each occurrence for bodily injury and property damage shall be in the amount specified by the board in the regulations adopted pursuant to Section 25299.77.

(c) The level of financial responsibility required to be obtained pursuant to Section 25299.31 shall be in the amount specified by the board for annual aggregate coverage for both corrective action and bodily injury and property damage.

(d) The board may periodically increase the minimum level of financial responsibility specified in subdivision (a) upon its determination that private insurance is available and affordable.

(e) The changes made to this section by the act adding this subdivision shall apply to all claimants with claims, or portions of claims, for corrective action at sites that have not been completed, and for which reimbursement by the fund has not been fully paid by the board.

25299.33. Financial responsibility; federal act; local agency.

(a) An owner and operator subject to Section 25299.30 may establish evidence of financial responsibility pursuant to this article by any one or more of the means specified in the federal act.

(b) An owner or operator shall submit evidence of financial responsibility on a prepared form to the local agency which has issued a permit for the operation of the tank pursuant to Section 25284.

25299.34. Guarantor liability limitation. (a) The total liability of any guarantor under this chapter is limited to the aggregate amount which the guarantor has provided as evidence of financial responsibility to the owner or operator pursuant to this article. This section does not limit any other state or

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federal statutory, contractual, or common-law liability of a guarantor to its owner or operator, including, but not limited to, the liability of the guarantor for bad faith either in negotiating or in failing to negotiate the settlement of any claim.

(b) For the purposes of this section, “guarantor” means any person, including the insurance fund or the fund, other than the owner or operator, who provides evidence of financial responsibility for an owner or operator pursuant to Section 25299.31.

Article 4. Corrective Action

- § 25299.36. Corrective action; regional board or local agency.
- § 25299.37. Corrective action; compliance; ensurance; issuance of an order; appeal and review rights; federal act; noncompliance. [Repealed.]
- § 25299.37.1. MTBE testing required for closure letter. [Renumbered.]
- § 25299.38. Advisory committee on groundwater monitoring. [Repealed.]
- § 25299.38. Corrective action.
- § 25299.38.1. Guidelines for MTBE cleanup. [Repealed.]
- § 25299.39. Suspension of a corrective action. [Repealed.]
- § 25299.39.1. Maintenance of petroleum discharge data. [Renumbered.]
- § 25299.39.2. Notification of owners or operators of status.
- § 25299.39.3. Access to property by regional board or local agency.

25299.36. Corrective action; regional board or local agency. The board, a regional board, or a local agency may undertake or contract for corrective action in response to an unauthorized release from an underground storage tank that is subject to this chapter, pursuant to subdivision (f) of Section 25296.10 or if a situation exists that requires prompt action by the board, a regional board, or local agency to protect human health or the environment. At the request of the board or a regional board, the Department of General Services may enter into a contract on behalf of the board or a regional board and acting as the agent of the board or a regional board. Notwithstanding any other provision of law, if a situation requires prompt action by the board or a regional board to protect human health or the environment, the board or a regional board may enter into oral contracts for this work, and the contracts, whether written or oral, may include provisions for equipment rental and, in addition, the furnishing of labor and materials necessary to accomplish the work. These contracts for corrective action by the board or a regional board are exempt from approval by the Department of General Services if the situation requires prompt action to protect human health or the environment.

25299.37. Corrective action; compliance; ensurance; issuance of an order; appeal and review rights; federal act; noncompliance. [Repealed by Stats. 2002, Ch. 999 (AB 2481), in effect January 1, 2003.]

25299.37.1. MTBE testing required for closure letter. [Renumbered as Section 25296.15 by Stats. 2002, Ch. 999 (AB 2481), in effect January 1, 2003.]

25299.38. **Advisory committee on groundwater monitoring.**
[Repealed by Stats. 1999, Ch. 328 (SB 665), in effect January 1, 2000.]

25299.38. **Corrective action.** (a) The local agency, the board, or the regional board shall advise and work with the owner, operator, or other responsible party on the opportunity to seek preapproval of corrective action costs pursuant to Section 2811.4 of Title 23 of the California Code of Regulations or any successor regulation. Regional board staff and local agency staff shall work with the responsible party and fund staff to obtain preapproval for the responsible party. The fund staff shall grant or deny a request for preapproval within 30 calendar days after the date a request is received. If fund staff denies a request for preapproval or fails to act within 30 calendar days after receiving the request, an owner, operator, or other responsible party who has prepared a work plan that has been reviewed and accepted pursuant to paragraph (3) of subdivision (c) of Section 25296.10, and is denied preapproval of corrective action costs for one or more of the actions required by the work plan, may petition the board for review of the request for preapproval. The board shall review the petition pursuant to Section 25299.56, and for that purpose the petition for review of a request for preapproval of corrective action costs shall be reviewed by the board in the same manner as a petition for review of an unpaid claim.

(b) If the board receives a petition for review pursuant to subdivision (a), the board shall review the request for preapproval and grant or deny the request pursuant to this subdivision and subdivision (c). The board shall deny the request for preapproval if the board makes one of the following findings:

(1) The petitioner is not eligible to file a claim pursuant to Article 6 (commencing with Section 25299.50).

(2) The petitioner failed to submit one or more of the documents required by the regulations adopted by the board governing preapproval.

(3) The petitioner failed to obtain three bids or estimates for corrective action costs and, under the circumstances pertaining to the corrective action, there is no valid reason to waive the three-bid requirement pursuant to the regulations adopted by the board.

(c) If the board does not deny the request for preapproval pursuant to subdivision (b), the board shall grant the request for preapproval. However, the board may modify the request by denying preapproval of corrective action costs or reducing the preapproval amount of those costs for any action required by the work plan, if the board finds that the fund staff has demonstrated either of the following:

(1) The amount of corrective action reimbursement requested for the action is not reasonable. In determining if the fund staff has demonstrated that the amount of reimbursement requested for an action is not reasonable, the board shall use, when available, recent experience with bids or estimates for similar actions.

(2) The action required in the work plan is, in all likelihood, not necessary for the corrective action to comply with the requirements of subdivisions (a) and (b) of Section 25296.10 and the corrective action regulations adopted pursuant to Section 25299.3.

25299.38.1. Guidelines for MTBE cleanup. [Repealed by Stats. 2002, Ch. 999 (AB 2481), in effect January 1, 2003.]

25299.39. Suspension of a corrective action. [Repealed by Stats. 2002, Ch. 999 (AB 2481), in effect January 1, 2003.]

25299.39.1. Maintenance of petroleum discharge data. [Renumbered as Section 25296.35 by Stats. 2002, Ch. 999 (AB 2481), in effect January 1, 2003.]

25299.39.2. Notification of owners or operators of status. (a) The manager responsible for the fund shall notify tank owners or operators who have an active letter of commitment that has been in an active status for five years or more and shall review the case history of their tank case on an annual basis unless otherwise notified by the tank owner or operator within 30 days of the notification. The manager, with approval of the tank owner or operator, may make a recommendation to the board for closure. The board may close the tank case or require the closure of a tank case at a site under the jurisdiction of a regional board or a local agency implementing a local oversight program under Section 25297.1 if the board determines that corrective action at the site is in compliance with all of the requirements of subdivisions (a) and (b) of Section 25296.10 and the corrective action regulations adopted pursuant to Section 25299.3. If a tank case is at a site under the jurisdiction of a local agency that is not implementing a local oversight program under Section 25297.1, the board may recommend to the local agency that the case be closed.

(b) Any aggrieved person may, not later than 30 days from the date of final action by the board, pursuant to subdivision (a), file with the superior court a petition for writ of mandate for review of the decision. If the aggrieved person does not file a petition for writ of mandate within the time provided by this subdivision, a board decision shall not be subject to review by any court. Section 1094.5 of the Code of Civil Procedure shall govern proceedings for which petitions are filed pursuant to this subdivision. For purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall uphold the decision if the decision is based upon substantial evidence in light of the whole record.

(c) The authority provided under this section does not limit a person's ability to petition the board for review under any other state law.

25299.39.3. Access to property by regional board or local agency. The board, a regional board, or local agency shall be permitted reasonable access to property owned or possessed by an owner, operator, or

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responsible party as necessary to perform corrective action pursuant to Section 25299.36. The access shall be obtained with the consent of the owner or possessor of the property or, if the consent is withheld, with a warrant duly issued pursuant to the procedure described in Title 13 (commencing with Section 1822.50) of Part 3 of the Code of Civil Procedure. However, in the event of an emergency affecting public health or safety, or the environment, the board, a regional board, or local agency may enter the property without consent or the issuance of a warrant.

Article 5. Fees

- § 25299.40. Annual maintenance fee. [Repealed.]
- § 25299.41. Deposit of money. [Repealed.]
- § 25299.42. Administration. [Repealed.]

25299.40. **Annual maintenance fee.** [Repealed by Stats. 1990, Ch. 1366, in effect September 27, 1990.]

25299.41. **Deposit of money.** [Repealed by Stats. 1990, Ch. 1366, in effect September 27, 1990.]

25299.42. **Administration.** [Repealed by Stats. 1990, Ch. 1366, in effect September 27, 1990.]

Article 5. Fees

- § 25299.40. Declaration by Legislature.
- § 25299.41. Payment of fee.
- § 25299.42. Regulations; collection and deposit of fees.
- § 25299.43. Additional fee.

25299.40. **Declaration by Legislature.** The Legislature hereby declares that the storage fees imposed by this article do not constitute a tax and are not collected for purposes of increasing state revenues pursuant to Section 3 of Article XIII A of the California Constitution.

25299.41. **Payment of fee.** For purposes of implementing this chapter, every owner of an underground storage tank for which a permit is required pursuant to Section 25284 shall pay a storage fee of six mills (\$0.006) for each gallon of petroleum placed in an underground storage tank which he or she owns. The fee imposed pursuant to this section shall be paid to the State Board of Equalization pursuant to Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code.

25299.42. **Regulations; collection and deposit of fees.** (a) The State Board of Equalization may adopt regulations to carry out Section 25299.41, including, but not limited to, provisions governing collections, reporting, refunds, and appeals.

(b) The State Board of Equalization shall collect the fee imposed by this article commencing on the first day of the first calendar quarter which begins more than 90 days after the effective date of the act adding this article.

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(c) The State Board of Equalization shall deposit all fees collected pursuant to this article in the fund.

25299.43. **Additional fee.** (a) To implement the changes to this chapter made by the act adding this section, and consistent with Section 25299.40, effective January 1, 1995, every owner subject to Section 25299.41 shall pay a storage fee of one mill (\$0.001) for each gallon of petroleum placed in an underground storage tank which the person owns, in addition to the fee required by Section 25299.41.

(b) On and after January 1, 1996, the storage fee imposed under subdivision (a) shall be increased by two mills (\$0.002) for each gallon of petroleum placed in an underground storage tank.

(c) On and after January 1, 1997, the storage fee increased under subdivision (b) shall be increased by an additional three mills (\$0.003) for each gallon of petroleum placed in an underground storage tank.

(d) On and after January 1, 2005, the storage fee increased under subdivision (c) shall be increased by an additional one mill (\$0.001) for each gallon of petroleum placed in an underground storage tank.

(e) On and after January 1, 2006, the storage fee increased under subdivision (d) shall be increased by an additional one mill (\$0.001) for each gallon of petroleum placed in an underground storage tank.

(f) The fee imposed under this section shall be paid to the State Board of Equalization under Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code in the same manner as, and consistent with, the fees imposed under Section 24299.41.

(g) The State Board of Equalization shall amend the regulations adopted pursuant to Section 25299.41 to carry out this section.

Article 6. Underground Storage Tank Cleanup Fund

§ 25299.50.	Creation of fund.
§ 25299.50.1.	Fire Safety Subaccount.
§ 25299.50.2.	<u>Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Subaccount</u>
§ 25299.51.	Expenditure of revenues.
§ 25299.52.	Corrective action; priority ranking list.
§ 25299.53.	Corrective action; notification of the board; estimate of costs.
§ 25299.54.	Corrective action; satisfaction of claims.
§ 25299.55.	Corrective action; forms and procedures for claims.
§ 25299.56.	Corrective action; decision notification on claims. [Repealed.]
§ 25299.56.	Applicant's eligibility.
§ 25299.57.	Corrective action; reimbursement of costs.
§ 25299.58.	Reimbursable costs by board.
§ 25299.59.	Corrective action; procedures; remedy.
§ 25299.60.	Payment of claims.
§ 25299.61.	Payment of claims; unauthorized release.
§ 25299.62.	Payment by Controller.
§ 25299.63.	Administrative remedies.

25299.50. **Creation of fund.** (a) The Underground Storage Tank Cleanup Fund is hereby created in the State Treasury. The money in the fund

may be expended by the board, upon appropriation by the Legislature, for purposes of this chapter. From time to time, the board may modify existing accounts or create accounts in the fund or other funds administered by the board, which the board determines are appropriate or necessary for proper administration of this chapter.

(b) Except for funds transferred to the Drinking Water Treatment and Research Fund created pursuant to subdivision (c) of Section 116367, all of the following amounts shall be deposited in the fund:

(1) Money appropriated by the Legislature for deposit in the fund.

(2) The fees, interest, and penalties collected pursuant to Article 5 (commencing with Section 25299.40).

(3) Notwithstanding Section 16475 of the Government Code, any interest earned upon the money deposited in the fund.

(4) Any money recovered by the fund pursuant to Section 25299.70.

(5) Any civil penalties collected by the board or regional board pursuant to Section 25299.76.

(c) (1) Notwithstanding subdivision (a), any funds appropriated by the Legislature in the annual Budget Act for payment of a claim for the costs of a corrective action in response to an unauthorized release, that are encumbered for expenditure for a corrective action pursuant to a letter of credit issued by the board pursuant to subdivision (e) of Section 25299.57, but are subsequently not expended for that corrective action claim, may be reallocated by the board for payment of other claims for corrective action pursuant to Section 25299.57.

(2) Notwithstanding Section 7550.5 of the Government Code, the board shall report at least once every three months on the implementation of this subdivision to the Senate Committee on Budget and Fiscal Review, the Senate Committee on Environmental Quality, the Assembly Committee on Budget, and the Assembly Committee on Environmental Safety and Toxic Materials, or to any successor committee, and to the Director of Finance.

25299.50.1. Fire Safety Subaccount. (a) For purposes of this section, “fire safety agency” means a city fire department, county fire department, city and county fire department, fire protection district, a joint powers authority formed for the purpose of providing fire protection services, or any other local agency that normally provides fire protection services.

(b) The Fire Safety Subaccount is hereby created in the Underground Storage Tank Cleanup Fund, for expenditure by the board to pay a claim described in paragraph (4) of subdivision (b) of Section 25299.52 that was filed before January 1, 2000, by a fire safety agency. Except as provided in subdivision (d), the board shall pay a claim filed by a fire safety agency only from funds appropriated from the Fire Safety Subaccount.

(c) The sum of five million dollars (\$5,000,000) of the moneys in the fund derived from the sources described in paragraphs (1) to (4), inclusive, of subdivision (b) of Section 25299.50 is hereby transferred from the fund to the

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Fire Safety Subaccount, and appropriated therefrom to the board, for expenditure pursuant to this section for a claim filed by a fire safety agency specified in subdivision (b).

(d) The unpaid amount of a claim filed by a fire safety agency specified in subdivision (b), for which a closure letter has not been issued pursuant to subdivision (g) of Section 25296.10 on or before January 1, 2006, may not be paid from funds in the Fire Safety Subaccount but shall revert to the priority ranking for claims specified in Section 25299.52.

(e) The payment of claims pursuant to this section may not affect the board's payment of claims filed pursuant to paragraph (1), (2), or (3) of subdivision (b) of Section 25299.52.

(f) Any funds remaining in the Fire Safety Subaccount on January 1, 2006, shall be transferred to the fund.

(g) Notwithstanding Section 16304 of the Government Code, any funds appropriated for expenditure pursuant to this section shall be eligible for encumbrance until June 30, 2004. Notwithstanding Section 16304.1 of the Government Code, those encumbered funds shall be liquidated on or before December 31, 2005.

(h) This section shall remain in effect only until January 1, 2006, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2006, deletes or extends that date.

25299.50.2. Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Subaccount. (a) The Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Subaccount is hereby established in the Underground Storage Tank Cleanup Fund.

(b) The sum of 10 million dollars (\$10,000,000) is hereby annually transferred, for calendar years 2005, 2006, and 2007, from the fund to the Underground Storage Tank Petroleum Contamination Orphan Site Cleanup Subaccount, for expenditure upon appropriation by the Legislature, for the costs of response actions to remediate the harm caused by a petroleum contamination, including contamination caused by a refined product of petroleum or a petroleum derivative, at sites that meet the conditions described in paragraph (2) of subdivision (a) of Section 25395.20, if all of the following conditions are met:

(1) The petroleum contamination is the principal source of contamination at the site.

(2) The source of the petroleum contamination is, or was, an underground storage tank.

(3) A financially responsible party has not been identified to pay for remediation at the site.

(c) Any funds in the subaccount that are not expended in calendar year 2005 and 2006 shall remain in the subaccount. Any funds remaining in the subaccount on January 1, 2008, shall be transferred to the fund.

(d) This section shall remain in effect only until January 1, 2008, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2008, deletes or extends that date.

25299.51. **Expenditure of revenues.** The board may expend the money in the fund for all the following purposes:

(a) In addition to the purposes specified in subdivisions (c), (d), and (e), for the costs of implementing this chapter and for implementing Section 25296.10 for a tank that is subject to this chapter.

(b) To pay for the administrative costs of the State Board of Equalization in collecting the fee imposed by Article 5 (commencing with Section 25299.40).

(c) To pay for the reasonable and necessary costs of corrective action pursuant to Section 25299.36, up to one million five hundred thousand dollars (\$1,500,000) per occurrence. The Legislature may appropriate the money in the fund for expenditure by the board, without regard to fiscal year, for prompt action in response to any unauthorized release.

(d) To pay for the costs of an agreement for the abatement of, and oversight of the abatement of, an unauthorized release of hazardous substances from underground storage tanks, by a local agency, as authorized by Section 25297.1 or by any other provision of law, except that, for the purpose of expenditure of these funds, only underground storage tanks, as defined in Section 25299.24, shall be the subject of the agreement.

(e) To pay for the costs of cleanup and oversight of unauthorized releases at abandoned tank sites. The board shall not expend more than 25 percent of the total amount of money collected and deposited in the fund annually for the purposes of this subdivision and subdivision (h).

(f) To pay claims pursuant to Section 25299.57.

(g) To pay, upon order of the Controller, for refunds pursuant to Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code.

(h) To pay for the reasonable and necessary costs of corrective action pursuant to subdivision (f) of Section 25296.10, in response to an unauthorized release from an underground storage tank subject to this chapter.

(i) To pay claims pursuant to Section 25299.58.

(j) To pay for expenditures by the board associated with discovering violations of, and enforcing, or assisting in the enforcement of, the requirements of Chapter 6.7 (commencing with Section 25280) with regard to petroleum underground storage tanks.

(k) For transfer to the Petroleum Underground Storage Tank Financing Account, for purposes of Chapter 6.77 (commencing with Section 25299.200).

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25299.52. Corrective action; priority ranking list. (a) The board shall adopt a priority ranking list at least annually for awarding claims pursuant to Section 25299.57 or 25299.58. Any owner or operator eligible for payment of a claim pursuant to Section 25299.54 shall file an application with the board within a reasonable period, to be determined by the board, prior to adoption of the priority ranking list.

(b) Except as provided in subdivision (c), in awarding claims pursuant to Section 25299.57 or 25299.58, the board shall pay claims in accordance with the following order of priority:

(1) Owners of tanks who are eligible to file a claim pursuant to subdivision (e) of Section 25299.54.

(2) Owners and operators of tanks that are either of the following:

(A) An owner or operator of a tank that is a small business, by meeting the requirements of subdivision (d) of Section 14837 of the Government Code. An owner or operator that meets that definition of small business, but who is domiciled or has its principal office outside of the state, shall be classified in this category if the owner or operator otherwise meets the requirements of subdivision (d) of Section 14837 of the Government Code with regard to the number of employees and the total annual revenues received.

(B) An owner or operator that is a city, county, district, or nonprofit organization that receives total annual revenues of not more than seven million dollars (\$7,000,000). In determining the amount of a nonprofit organization's annual revenues, the board shall calculate only those revenues directly attributable to the particular site at which the tank or tanks for which the claim is submitted are located.

(3) Owners or operators of tanks that are either of the following:

(A) The owner or operator owns and operates a business that employs fewer than 500 full-time and part-time employees, is independently owned and operated, and is not dominant in its field of operation.

(B) The owner or operator is a city, county, district, or nonprofit organization that employs fewer than 500 full-time and part-time employees. In determining the number of employees employed by a nonprofit organization, the board shall calculate only those employees employed at the particular site at which a tank for which the claim is being submitted is located.

(4) All other tank owners and operators.

(c) (1) In any year in which the board is not otherwise authorized to award at least 15 percent of the total amount of funds committed for that year to tank owners or operators in those categories set forth in paragraph (3) or (4) of subdivision (b) due to the priority ranking list award limitations set forth in subdivision (b), the board shall allocate between 14 and 16 percent of the total amount of funds committed for that year to each category that is not otherwise entitled to at least that level of committed funding for that year.

(2) If the total amount of claims outstanding in one or more of the priority categories specified in paragraph (3) or (4) of subdivision (b) is less than 15 percent of the total amount annually appropriated from the fund for the purpose of awarding claims, the board shall reserve for making claims in that category only the amount that is necessary to satisfy the outstanding claims in that category.

(d) The board shall give priority to a claim that is filed before September 24, 1993, by a city, county, or district that is eligible for payment pursuant to Section 25299.54 in the following manner:

(1) The board shall determine whether the priority category specified for a city, county, or district pursuant to subparagraph (B) of paragraph (2), or pursuant to subparagraph (B) of paragraph (3), of subdivision (b) requires that the priority ranking of the claim be changed.

(2) If the priority ranking of the claim is changed and the claim is placed into either the priority category specified in subparagraph (B) of paragraph (2), or specified in subparagraph (B) of paragraph (3), of subdivision (b), the board shall pay all other claims that were assigned to that priority category prior to January 1, 2000, before paying the claim of the city, county, or district.

(e) The board may, to carry out the intent specified in paragraph (1) of subdivision (b) of Section 25299.10 and to expedite the processing and awarding of claims pursuant to Sections 25299.57 and 25299.58, implement the contracting procedures required by Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code, as may be necessary, to alleviate the claims processing and award backlog. If, at the conclusion of any fiscal year, 25 percent or more of the funds appropriated annually for awards to claimants during that year have not actually been obligated by the board, the board shall, at its next regularly scheduled meeting, determine, in a public hearing, whether, given the circumstances of the awards backlog, it is appropriate to implement those contracting procedures for some, or all, of the claims filed with the board.

(f) For purposes of this section, the following definitions shall apply:

(1) "Nonprofit organization" means a nonprofit public benefit organization incorporated pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code.

(2) "Annual revenue," with respect to public entities, means the total annual general purpose revenues, excluding all restricted revenues over which the governing agency has no discretion, as reported in the Annual Report of Financial Transactions submitted to the Controller, for the latest fiscal year ending prior to the date the fund application was filed.

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(3) “Annual revenue,” with respect to nonprofit organizations, means the total annual revenues, as shown in an annual fiscal report filed with the Registry of Charitable Trusts of state and federal tax records, based on the latest fiscal year ending prior to the date the fund application was filed.

(4) “General purpose revenues,” as used in paragraph (2), means revenues consisting of all of the following: secured and unsecured revenues; less than countywide funds, secured and unsecured; prior year secured and unsecured penalties and delinquent taxes; sales and use taxes; transportation taxes (nontransit); property transfer taxes; transient lodging taxes; timber yield taxes; aircraft taxes; franchise taxes; fines, forfeitures, and penalties; revenues from use of money and property; motor vehicle in-lieu taxes; trailer coach in-lieu taxes; homeowner property tax relief; open-space tax relief; and cigarette taxes.

25299.53. Corrective action; notification of the board; estimate of costs. (a) A regional board or a local agency taking, or contracting for, corrective action pursuant to subdivision (f) of Section 25296.10 in response to an unauthorized release from an underground storage tank subject to this chapter shall, before commencing the corrective action, take both of the following actions:

(1) The regional board or local agency shall notify the board of the planned corrective action. If an owner, operator, or other responsible party is taking the corrective action in accordance with Section 25296.10, the regional board or local agency shall not initiate a corrective action pursuant to this chapter or Chapter 6.7 (commencing with Section 25280).

(2) If an owner, operator, or other responsible party is not taking or has not taken the action specified in paragraph (1), the regional board or local agency shall submit the estimated cost of the corrective action to the board, which shall approve or disapprove the reasonableness of the cost estimate. The regional board or local agency shall obtain approval of the corrective action and the cost estimate before taking, or contracting for, any corrective action.

(b) If the board approves the request of the regional board or local agency made pursuant to paragraph (2) of subdivision (a), the board shall, after making the determination specified in subdivision (c), pay for the costs of corrective action performed by a regional board, local agency, or qualified contractor.

(c) The board shall not make any payment pursuant to subdivision (b) unless the board determines that the owner, operator, or other responsible party of the tank has failed or refused to comply with a final order for corrective action issued pursuant to Section 25296.10 with respect to the unauthorized release of petroleum from the tank.

(d) Upon making any payment to a regional board or local agency pursuant to subdivision (b), the board shall recover the amount of payment pursuant to Section 25299.70.

25299.54. Corrective action; satisfaction of claims. (a) Except as provided in subdivisions (b), (c), (d), (e), (g), and (h) an owner or operator, required to perform corrective action pursuant to Section 25296.10 or an owner or operator who, as of January 1, 1988, is required to perform corrective action, who has initiated this action in accordance with Division 7 (commencing with Section 13000) of the Water Code, who is undertaking corrective action in compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code, or Chapter 6.7 (commencing with Section 25280), may apply to the board for satisfaction of a claim filed pursuant to this article.

(b) A person who has failed to comply with Article 3 (commencing with Section 25299.30) is ineligible to file a claim pursuant to this section.

(c) Any owner or operator of an underground storage tank containing petroleum is ineligible to file a claim pursuant to this section if the person meets both of the following conditions:

(1) The person knew, before January 1, 1988, of the unauthorized release of petroleum which is the subject of the claim.

(2) The person did not initiate, on or before June 30, 1988, any corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code concerning the release, or the person did not, on or before June 30, 1988, initiate corrective action in accordance with Chapter 6.7 (commencing with Section 25280) or the person did not initiate action on or before June 30, 1988, to come into compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with Section 13000) of the Water Code concerning the release.

(d) An owner or operator who violates Section 25296.10 or any corrective action order, directive, notification, or approval order issued pursuant to this chapter, Chapter 6.7 (commencing with Section 25280), or Division 7 (commencing with Section 13000) of the Water Code, is liable for any corrective action costs that result from the owner's or operator's violation and is ineligible to file a claim pursuant to this section.

(e) Notwithstanding this chapter, a person who owns a tank located underground that is used to store petroleum may apply to the board for satisfaction of a claim, and the board may pay the claim pursuant to Section 25299.57 without making the findings specified in paragraph (3) of subdivision (d) of Section 25299.57 if all of the following apply:

(1) The tank meets one of the following requirements:

(A) The tank is located at the residence of a person on property used exclusively for residential purposes at the time of discovery of the unauthorized release of petroleum.

(B) The tank owner demonstrates that the tank is located on property that, on and after January 1, 1985, is not used for agricultural purposes, the tank is of a type specified in subparagraph (B) of paragraph (1) of subdivision (y) of Section 25281, and the petroleum in the tank is used solely for the

purposes specified in subparagraph (B) of paragraph (1) of subdivision (y) of Section 25281 on and after January 1, 1985.

(2) The tank is not a tank described in subparagraph (A) of paragraph (1) of subdivision (y) of Section 25281 and the tank is not used on or after January 1, 1985, for the purposes specified in that subparagraph.

(3) The claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280), or the claimant is not subject to the requirements of those provisions.

(f) Whenever the board has authorized the prepayment of a claim pursuant to Section 25299.57, and the amount of money available in the fund is insufficient to pay the claim, the owner or operator shall remain obligated to undertake the corrective action in accordance with Section 25296.10.

(g) The board shall not reimburse a claimant for any eligible costs for which the claimant has been, or will be, compensated by another person. This subdivision does not affect reimbursement of a claimant from the fund under either of the following circumstances:

(1) The claimant has a written contract, other than an insurance contract, with another person that requires the claimant to reimburse the person for payments the person has provided the claimant pending receipt of reimbursement from the fund.

(2) An insurer has made payments on behalf of the claimant pursuant to an insurance contract and either of the following apply:

(A) The insurance contract explicitly coordinates insurance benefits with the fund and requires the claimant to do both of the following:

(i) Maintain the claimant's eligibility for reimbursement of costs pursuant to this chapter by complying with all applicable eligibility requirements.

(ii) Reimburse the insurer for costs paid by the insurer pending reimbursement of those costs by the fund.

(B) The claimant received a letter of commitment prior to June 30, 1999, for the occurrence and the claimant is required to reimburse the insurer for any costs paid by the insurer pending reimbursement of those costs by the fund.

(h) (1) Except as provided in paragraph (2), a person who purchases or otherwise acquires real property on which an underground storage tank or tank specified in subdivision (e) is situated shall not be reimbursed by the board for a cost attributable to an occurrence that commenced prior to the acquisition of the real property if both of the following conditions apply:

(A) The purchaser or acquirer knew, or in the exercise of reasonable diligence would have discovered, that an underground storage tank or tank specified in subdivision (e) was located on the real property being acquired.

(B) Any person who owned the site or owned or operated an underground storage tank or tank specified in subdivision (e) at the site during or after the occurrence and prior to acquisition by the purchaser or acquirer would not have been eligible for reimbursement from the fund.

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(2) Notwithstanding paragraph (1), if the claim is filed on or after January 1, 2003, the board may reimburse the eligible costs claimed by a person who purchases or otherwise acquires real property on which an underground storage tank or tank specified in subdivision (e) is situated, if all of the following conditions apply:

(A) The claimant is the owner or operator of the tank that had an occurrence that commenced prior to the owner's acquisition of the real property.

(B) The claimant satisfies all eligibility requirements, other than those specified in paragraph (1).

(C) The claimant is not an affiliate of any person whose act or omission caused or would cause ineligibility for the fund.

(3) If the board reimburses a claim pursuant to paragraph (2), any person specified in subparagraph (B) of paragraph (1), other than a person who is ineligible for reimbursement from the fund solely because the property was acquired from another person who was ineligible for reimbursement from the fund, shall be liable for the amount paid from the fund. The Attorney General, upon request of the board, shall bring a civil action to recover the liability imposed under this paragraph. All money recovered by the Attorney General under this paragraph shall be deposited in the fund.

(4) The liability established pursuant to paragraph (3) does not limit or supersede liability under any other provision of state or federal law, including common law.

(5) For purposes of this subdivision, the following definitions shall apply:

(A) "Affiliate" means a person who has one or more of the following relationships with another person:

- (i) Familial relationship.
- (ii) Fiduciary relationship.
- (iii) A relationship of direct or indirect control or shared interests.

(B) Affiliates include, but are not limited to, any of the following:

- (i) Parent corporation and subsidiary.
- (ii) Subsidiaries that are owned by the same parent corporation.
- (iii) Business entities involved in a reorganization, as defined in Section 181 of the Corporations Code.
- (iv) Corporate officer and corporation.
- (v) Shareholder that owns a controlling block of voting stock and the corporation.
- (vi) Partner and the partnership.
- (vii) Member and a limited liability company.
- (viii) Franchiser and franchisee.
- (ix) Settlor, trustee, and beneficiary of a trust.
- (x) Debtor and bankruptcy trustee or debtor-in-possession.
- (xi) Principal and agent.

(C) “Familial relationship” means relationships between family members, including, and limited to, a husband, wife, child, stepchild, parent, grandparent, grandchild, brother, sister, stepbrother, stepsister, stepmother, stepfather, mother-in-law, father-in-law, brother-in-law, sister-in-law, daughter-in-law, son-in-law, and, if related by blood, uncle, aunt, niece, or nephew.

(i) The Legislature finds and declares that the changes made to subparagraph (A) of paragraph (1) of subdivision (e) by Chapter 1290 of the Statutes of 1992 is declaratory of existing law.

(j) The Legislature finds and declares that the amendment of subdivisions (a) and (g) by Chapter 328 of the Statutes of 1999 is declaratory of existing law.

25299.55. Corrective action; forms and procedures for claims. The board shall prescribe appropriate forms and procedures for claims filed pursuant to Section 25299.54 that shall include, at a minimum, all of the following:

(a) A provision requiring the claimant to make a sworn verification of the claim to the best of the claimant’s knowledge.

(b) A full description, supported by appropriate evidence from government agencies, of the unauthorized release of petroleum into the environment from an underground storage tank claimed to be the subject of the third-party judgment specified in Section 25299.58 or the corrective action performed pursuant to Section 25296.10.

(c) Certification by the claimant of all costs that have been, or will be, incurred in undertaking corrective action after January 1, 1988.

25299.56. Corrective action; decision notification on claims. [Repealed by Stats. 1999, Ch. 328 (SB 665), in effect January 1, 2000.]

25299.56. Applicant’s eligibility. (a) The board shall determine an applicant’s eligibility for a claim for corrective action costs or third-party compensation costs pursuant to Section 25299.57 or 25299.58 and notify the applicant of that determination within 60 days from the date of the receipt of the fund application. The board may classify the claimant’s application pursuant to Section 25299.52 after that 60-day period. If the board sends an applicant a determination of eligibility pursuant to this subdivision, the board shall not revoke that determination of eligibility, unless the application contained fraudulent information or a misrepresentation. However, the board may suspend making a reimbursement for a claim until the claimant corrects any deficiencies that are the basis for the suspension. Reinstatement of reimbursement shall occur when funds are available and that reinstatement shall be made ahead of any new letters of commitment issued as of the date of reinstatement.

(b) A claimant may request review of any claim or portion of a claim not paid. The review shall be conducted and a decision rendered within 30 days from the date of receipt of the request.

(c) A claimant may file a petition for review, in writing, with the board with regard to any unpaid claim that is unresolved to the satisfaction of the claimant upon expiration of the 30-day period specified in subdivision (b) and the board shall take final action on the petition within 90 days of the board's receipt of a complete petition for review, except that if the board initiates an adjudicative proceeding on the petition, the board shall take final action within 270 days of the board's receipt of a complete petition for review.

(d) Final action on a petition taken by the board is a final agency action for the purposes of judicial review of a board decision.

(e) A claimant may, not later than 30 days from the date of final action by the board pursuant to subdivision (c), file with the superior court a petition for writ of mandate for review of the decision. If the claimant does not file a petition for writ of mandate within the time provided by this subdivision, a board decision shall not be subject to review by the court. Section 1094.5 of the Code of Civil Procedure shall govern the proceeding for a petition filed pursuant to this subdivision. For purposes of subdivision (c) of Section 1094.5 of the Code of Civil Procedure, the court shall uphold the decision if the decision is based upon substantial evidence in light of the whole record.

(f) Except as specified in subdivision (g), the procedures in Article 8 (commencing with Section 11435.05) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of, and in Section 11513 of, the Government Code apply to any adjudicative proceedings conducted by the board pursuant to this article.

(g) (1) Notwithstanding subdivision (f), Sections 801, 802, 803, 804, and 805 of the Evidence Code apply to any adjudicative proceeding conducted by the board pursuant to this article.

(2) This section is not a limitation on the authority of the board to authorize the use of the procedure provided in Article 10 (commencing with Section 11445.10) of Chapter 4.5 of Part 1 of Division 3 of Title 2 of the Government Code.

25299.57. Corrective action; reimbursement of costs. (a) If the board makes the determination specified in subdivision (d), the board may only pay for the costs of a corrective action that exceeds the level of financial responsibility required to be obtained pursuant to Section 25299.32, but not more than one million five hundred thousand dollars (\$1,500,000) for each occurrence. In the case of an owner or operator who, as of January 1, 1988, was required to perform corrective action, who initiated that corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), and who is undertaking the corrective action in compliance with waste discharge requirements or other orders issued pursuant to Division 7 (commencing with

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Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280), the owner or operator may apply to the board for satisfaction of a claim filed pursuant to this article. The board shall notify claimants applying for satisfaction of claims from the fund of eligibility for reimbursement in a prompt and timely manner and that a letter of credit or commitment that will obligate funds for reimbursement shall follow the notice of eligibility as soon thereafter as possible.

(b) (1) For claims eligible for reimbursement pursuant to subdivision (c) of Section 25299.55, the claimant shall submit the actual cost of corrective action to the board, which shall either approve or disapprove the costs incurred as reasonable and necessary. At least 15 days before the board proposes to disapprove the reimbursement of corrective action costs that have been incurred on the grounds that the costs were unreasonable or unnecessary, the board shall issue a notice advising the claimant and the lead agency of the proposed disallowance, to allow review and comment.

(2) The board shall not reject any actual costs of corrective action in a claim solely on the basis that the invoices submitted fail to sufficiently detail the actual costs incurred, if all of the following apply:

(A) Auxiliary documentation is provided that documents to the board's satisfaction that the invoice is for necessary corrective action work.

(B) The costs of corrective action work in the claim are reasonably commensurate with similar corrective action work performed during the same time period covered by the invoice for which reimbursement is sought.

(C) The invoices include a brief description of the work performed, the date that the work was performed, the vendor, and the amount.

(c) (1) For claims eligible for prepayment pursuant to subdivision (c) of Section 25299.55, the claimant shall submit the estimated cost of the corrective action to the board, which shall approve or disapprove the reasonableness of the cost estimate.

(2) If the claim is for reimbursement of costs incurred pursuant to a performance-based contract, Article 6.5 (commencing with Section 25299.64) shall apply to that claim.

(d) Except as provided in subdivision (j), a claim specified in subdivision (a) may be paid if the board makes all of the following findings:

(1) There has been an unauthorized release of petroleum into the environment from an underground storage tank.

(2) The claimant is required to undertake or contract for corrective action pursuant to Section 25296.10, or, as of January 1, 1988, the claimant has initiated corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code.

(3) (A) Except as provided in subparagraph (B), the claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280).

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(B) All claimants who file their claim on or after January 1, 1994, and all claimants who filed their claim prior to that date but are not eligible for a waiver of the permit requirement pursuant to board regulations in effect on the date of the filing of the claim, and who did not obtain or apply for any permit required by subdivision (a) of Section 25284 by January 1, 1990, shall be subject to subparagraph (A) regardless of the reason or reasons that the permit was not obtained or applied for. However, on and after January 1, 1994, the board may waive the provisions of subparagraph (A) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unaware of the permit requirement prior to January 1, 1990, and there was no intent to intentionally avoid the permit requirement or the fees associated with the permit.

(ii) Prior to submittal of the application to the fund, the claimant has complied with Section 25299.31 and has obtained and paid for all permits currently required by this paragraph.

(iii) Prior to submittal of the application to the fund, the claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 25299.40) and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(C) (i) A claimant exempted pursuant to subparagraph (B) shall obtain a level of financial responsibility twice as great as the amount which the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32.

(ii) The board may waive the requirements of clause (i) if the claimant can demonstrate that the conditions specified in clauses (i) to (iii), inclusive, of subparagraph (B) were satisfied prior to the causing of any contamination. That demonstration may be made through a certification issued by the permitting agency based on site and tank tests at the time of permit application or in any other manner acceptable to the board.

(D) The board shall rank all claims resubmitted pursuant to subparagraph (B) lower than all claims filed before January 1, 1994, within their respective priority classes specified in subdivision (b) of Section 25299.52.

(4) The board has approved either the costs incurred for the corrective action pursuant to subdivision (b) or the estimated costs for corrective action pursuant to subdivision (c).

(5) The claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 29299.40) and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(e) The board shall provide the claimant, whose cost estimate has been approved, a letter of credit authorizing payment of the costs from the fund.

(f) The claimant may submit a request for partial payment to cover the costs of corrective action performed in stages, as approved by the board.

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(g) (1) Any claimant who submits a claim for payment to the board shall submit multiple bids for prospective costs as prescribed in regulations adopted by the board pursuant to Section 25299.77.

(2) Any claimant who submits a claim to the board for the payment of professional engineering and geologic work shall submit multiple proposals and fee estimates, as required by the regulations adopted by the board pursuant to Section 25299.77. The claimant's selection of the provider of these services is not required to be based on the lowest estimated fee, if the fee estimate conforms with the range of acceptable costs established by the board.

(3) Any claimant who submits a claim for payment to the board for remediation construction contracting work shall submit multiple bids, as required in the regulations adopted by the board pursuant to Section 25299.77.

(4) Paragraphs (1), (2), and (3) do not apply to a tank owned or operated by a public agency if the prospective costs are for private professional services within the meaning of Chapter 10 (commencing with Section 4525) of Division 5 of Title 1 of the Government Code and those services are procured in accordance with the requirements of that chapter.

(h) The board shall provide, upon the request of a claimant, assistance to the claimant in the selection of contractors retained by the claimant to conduct reimbursable work related to corrective actions. The board shall develop a summary of expected costs for common remedial actions. This summary of expected costs may be used by claimants as a guide in the selection and supervision of consultants and contractors.

(i) The board shall pay, within 60 days from the date of receipt of an invoice of expenditures, all costs specified in the work plan developed pursuant to Section 25296.10, and all costs that are otherwise necessary to comply with an order issued by a local, state, or federal agency.

(j) (1) The board shall pay a claim of not more than three thousand dollars (\$3,000) per occurrence for regulatory technical assistance to an owner or operator who is otherwise eligible for reimbursement under this chapter.

(2) For the purposes of this subdivision, regulatory technical assistance is limited to assistance from a person, other than the claimant, in the preparation and submission of a claim to the fund. Regulatory technical assistance does not include assistance in connection with proceedings under Section 25296.40, 25299.39.2, or 25299.56 or any action in court.

(k) (1) Notwithstanding any other provision of this section, the board shall pay a claim for the costs of corrective action to a person who owns property on which is located a release from a petroleum underground storage tank that has been the subject of a completed corrective action and for which additional corrective action is required because of additionally discovered contamination from the previous release, only if the person who carried out

the earlier and completed corrective action was eligible for, and applied for, reimbursement pursuant to subdivision (b), and only to the extent that the amount of reimbursement for the earlier corrective action did not exceed the amount of reimbursement authorized by subdivision (a). Reimbursement to a claimant on a reopened site shall occur when funds are available, and reimbursement commitment shall be made ahead of any new letters of commitment to be issued, as of the date of the reopening of the claim, if funding has occurred on the original claim, in which case funding shall occur at the time it would have occurred under the original claim.

(2) For purposes of this subdivision, a corrective action is completed when the local agency or regional board with jurisdiction over the site or the board issues a closure letter pursuant to subdivision (g) of Section 25296.10.

25299.58. Reimbursable costs by board. (a) Except as provided in subdivision (d), if the board makes the determination specified in subdivision (b), the board may only reimburse those costs that are related to the compensation of third parties for bodily injury and property damages and that exceed the level of financial responsibility required to be obtained pursuant to Section 25299.32, but not more than one million dollars (\$1,000,000) for each occurrence.

(b) A claim may be paid if the board makes all of the following findings:

(1) There has been an unauthorized release of petroleum into the environment from an underground storage tank.

(2) The claimant has been ordered to pay a settlement or final judgment for third-party bodily injury or property damage arising from operating an underground storage tank.

(3) (A) Except as provided in subparagraph (B), the claimant has complied with Section 25299.31 and the permit requirements of Chapter 6.7 (commencing with Section 25280).

(B) All claimants who file their claim on or after January 1, 1994, and all claimants who filed their claim prior to that date but are not eligible for a waiver of the permit requirement pursuant to board regulations in effect on the date of the filing of the claim, and who did not obtain or apply for any permit required by subdivision (a) of Section 25284 by January 1, 1990, shall be subject to subparagraph (A) regardless of the reason or reasons that the permit was not obtained or applied for. However, on and after January 1, 1994, the board may waive the provisions of subparagraph (A) as a condition for payment from the fund if the board finds all of the following:

(i) The claimant was unaware of the permit requirement prior to January 1, 1990, and there was no intent to intentionally avoid the permit requirement or the fees associated with the permit.

(ii) Prior to submittal of the application to the fund, the claimant has complied with Section 25299.31 and has obtained and paid for all permits currently required by this paragraph.

(iii) Prior to submittal of the application to the fund, the claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 25299.40) and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(C) (i) A claimant exempted pursuant to subparagraph (B) shall obtain a level of financial responsibility in an amount twice as great as the amount which the claimant is otherwise required to obtain pursuant to subdivision (a) of Section 25299.32.

(ii) The board may waive the requirements of clause (i) if the claimant can demonstrate that the conditions specified in clauses (i) to (iii), inclusive, of subparagraph (B) were satisfied prior to any contamination having been caused. That demonstration may be made through a certification issued by the permitting agency based on site and tank tests at the time of permit application or in any other manner as may be acceptable to the board.

(D) The board shall rank all claims resubmitted pursuant to subparagraph (B) lower than all claims filed before January 1, 1994, within their respective priority classes specified in subdivision (b) of Section 25299.52.

(4) The claimant is required to undertake or contract for corrective action pursuant to Section 25296.10, or, as of January 1, 1988, the claimant has initiated corrective action in accordance with Division 7 (commencing with Section 13000) of the Water Code or Chapter 6.7 (commencing with Section 25280).

(5) The claimant has paid all fees, interest, and penalties imposed pursuant to Article 5 (commencing with Section 29299.40) and Part 26 (commencing with Section 50101) of Division 2 of the Revenue and Taxation Code for the underground storage tank that is the subject of the claim.

(c) A claimant may be reimbursed by the fund for compensation of third parties for only the following:

(1) Medical expenses.

(2) Actual lost wages or business income.

(3) Actual expenses for remedial action to remedy the effects of damage to the property of the third party caused by the unauthorized release of petroleum from an underground storage tank.

(4) The fair market value of the property rendered permanently unsuitable for use by the unauthorized release of petroleum from an underground storage tank.

(d) The board shall pay a claim submitted pursuant to subdivision (e) of Section 25299.54 for the costs related to the compensation of third parties for bodily injury and property damages that exceed the level of financial responsibility required to be obtained pursuant to paragraph (2) of subdivision (a) of Section 25299.32, but not more than one million dollars (\$1,000,000) for each occurrence.

25299.59. Corrective action; procedures; remedy. (a) If the board has paid out of the fund for any costs of corrective action, the board shall not pay any other claim out of the fund for the same costs.

(b) Notwithstanding Sections 25299.57 and 25299.58, the board shall not reimburse or authorize prepayment of any claim in an aggregate amount exceeding one million five hundred thousand dollars (\$1,500,000), less the minimum level of financial responsibility specified in Section 25299.32, for a claim arising from the same event or occurrence. If a claim exceeds one million dollars (\$1,000,000) for an occurrence, the board may only reimburse costs submitted pursuant to Section 25299.57 for those costs in excess of one million dollars (\$1,000,000).

(c) The board may conduct an audit of any corrective action claim honored pursuant to this chapter. The claimant shall reimburse the state for any costs disallowed in the audit. A claimant shall preserve, and make available, upon request of the board or the board's designee, all records pertaining to the corrective action claim for a period of three years after the final payment is made to the claimant.

25299.60. Payment of claims. (a) The board shall not pay any claims against or presented to the fund pursuant to this article if the claim exceeds the total money in the fund at any one time. The board shall pay these claims only when additional money is collected, appropriated, or otherwise added to the fund. If the total claims outstanding at any time exceed the current balance of the fund, the board shall pay these claims in full to the extent authorized pursuant to this article.

(b) Any claim filed against the fund pursuant to this article may be paid only out of the fund. This chapter does not authorize the payment by the state of any additional amount with respect to any claim out of any source other than the fund.

(c) (1) Except as provided in paragraph (2), notwithstanding this article, the board shall not pay out any claims pursuant to this article to a claimant if the total amount paid to the claimant is greater than 5 percent of the total amount annually appropriated by the Legislature from the fund for purposes of paying claims pursuant to this article. For purposes of determining the total amount paid to a claimant for purposes of this section, the board shall include any payments made to any person or entity which has a relationship with the claimant specified in subsection (b) of Section 267 of Title 26 of the United States Code.

(2) The board may exempt a claim from the requirements of paragraph (1) if the board determines all of the following:

(A) The exemption would provide for an equitable and timely use of available fund moneys.

(B) The exemption would help to ensure an efficient petroleum underground storage tank cleanup program that adequately protects public health and safety and the environment.

(C) All claims subject to the exemption are awarded in accordance with the priority rankings established pursuant to Section 25299.52.

25299.61. Payment of claims; unauthorized release. The board shall not pay any claims against or presented to the fund pursuant to this article if the claims are in connection with an unauthorized release of petroleum into the environment from an underground storage tank resulting from the gross negligence or the intentional or reckless acts of the claimant.

25299.62. Payment by Controller. All reimbursement requests that are approved shall be forwarded to the Controller within 10 days from the date of approval, for payment by the Controller.

25299.63. Administrative remedies. This article does not require any person to pursue a claim against the board pursuant to this article before seeking any other remedy. This section does not affect the requirement for exhaustion of administrative remedies before obtaining judicial review of any action of the board on a claim or petition for closure of a tank case.

Article 6.5. Performance-Based Contract

§ 25299.64. Definitions.

§ 25299.65. Performance-based contract.

§ 25299.66. Limitation of article.

25299.64. Definitions. (a) For purposes of this article, the following definitions shall apply:

(1) "Baseline concentration" means the initial concentration of a constituent of concern prior to conducting corrective action pursuant to a performance-based contract.

(2) "Constituent of concern" means the chemical element, compound, or grouping, including, but not limited to, total petroleum hydrocarbons, as in gasoline, that is present in the soil or groundwater and subject to corrective action.

(3) "Performance-based contract" means a written agreement approved by the board between a claimant and an appropriately licensed contractor, where the contractor agrees for a fixed price to take corrective action to reduce the concentrations of designated constituents of concern to specified concentrations.

(4) "Remediation milestone" means that a specified reduction in the concentrations of constituents of concern from baseline concentrations has been attained through corrective action. The reduction is expressed as a percentage of the total reduction required by the performance-based contract.

(b) The board may pay a claim pursuant to Section 25299.57 to reimburse the cost of a performance-based contract if the board approves the contract as being consistent with this article.

(c) A performance-based contract includes, but is not limited to, the total fixed price contract amount, designated constituents of concern, baseline

concentrations, and if appropriate, a payment schedule indicating the amount to be paid when specified remediation milestones are attained.

(d) The board shall make payments based upon the reduction in the concentrations of designated constituents of concern to specified concentrations. If corrective action is estimated to take six months or more to achieve these concentrations and the remediation technology proposed is a pump-and-treat or other type of mechanical remediation technology, the board may pay a portion of the fixed price based on the attainment of specified remediation milestones or other performance parameters, in the following manner:

(1) The first payment shall include the amount of incurred capital costs upon successful installation and startup of the mechanical remediation system.

(2) The second payment shall be an amount equal to the agreed upon percent of the total contract price when the 25 percent remediation milestone is attained.

(3) The third payment shall be equal to an agreed upon percent of the total contract price when the 50 percent remediation milestone is attained.

(4) The fourth payment shall be equal to an agreed upon percent of the total contract price when the 75 percent remediation milestone is attained.

(5) The fifth payment shall be equal to an agreed upon percent of the total contract price when the 100 percent remediation milestone is attained.

(6) The final payment shall be the amount of the remaining contract price that shall be paid when the 100 percent remediation milestone has been maintained for one year following cessation of all active remediation.

25299.65. **Performance-based contract.** (a) The claimant shall submit multiple bids for a performance-based contract in accordance with paragraph (1) of subdivision (g) of Section 25299.57 and any regulations adopted by the board to implement that section.

(b) To assist claimants in soliciting bids for performance-based contract projects, the board shall advertise bid solicitations for these projects through the board's Web site. The board shall be the receiving address for the bids, and shall offer other assistance, upon request, in accordance with the regulations adopted pursuant to this chapter. The bids shall be sealed prior to submittal to the board. This subdivision does not prevent the board from approving a performance-based contract covering multisite cleanups, if the board determines that economies of scale will assist claimants in soliciting bids or reducing overall costs.

(c) The sites for which the board may consider approving a performance-based contract include, but are not limited to, all of the following:

(1) A site that had an unauthorized release reported to the board, the regional board, or local agency five or more years ago and active remediation has not begun.

(2) A site where corrective action has been implemented for two or more years pursuant to a corrective action plan that was approved by the board, the regional board, or local agency, but that corrective action has not been effective in reducing the concentrations of the constituents of concern to the satisfaction of that board or agency.

(3) A site where corrective action costs are expected to exceed the maximum fund reimbursement amount prior to case closure.

(4) A site where the board, the regional board, or local agency has recently determined that an unauthorized release has occurred that has the potential to impact nearby receptors or otherwise cause significant impact to the waters of the state.

(5) A site where an unauthorized release of MTBE, as defined in paragraph (2) of subdivision (a) of Section 25299.97, has occurred and corrective action has not been initiated or satisfactorily conducted, as determined by the board, the regional board, or local agency, or according to any regulations adopted pursuant to Section 25296.30.

(6) A site where the board, the regional board, or local agency has determined that corrective action other than ongoing monitoring of groundwater is more likely to reduce the concentrations of constituents of concern sooner and at a lower cost.

(d) This article does not preclude a claimant from requesting board approval of a performance-based contract to conduct corrective action at the claimant's site.

25299.66. **Limitation of article.** This article does not limit or abridge the powers and duties granted to the board, the regional board, or local agency pursuant to any other provision of law.

Article 7. Cost Recovery, Enforcement, and Administration

- § 25299.70. Cost recovery.
- § 25299.72. Court joined action.
- § 25299.73. Strict liability.
- § 25299.74. Cost recovery; limitations.
- § 25299.75. Liability; other provisions.
- § 25299.76. Violations.
- § 25299.77. Regulations: board shall adopt.
- § 25299.78. Authorized representative; authority.
- § 25299.79. Unrecoverable costs.

25299.70. Cost recovery. (a) Any costs incurred and payable from the fund pursuant to subdivisions (c), (e), and (h) of Section 25299.51 shall be recovered by the Attorney General, upon request of the board, from the owner or operator of the underground storage tank which released the petroleum and which is the subject of those costs or from any other responsible party.

(b) The liability of an owner or operator shall be the full and total costs specified in subdivision (a) if the owner or operator has not complied with the requirements of Article 3 (commencing with Section 25299.30) or has

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violated Section 25296.10 or any corrective action order, directive, notification or approval order issued pursuant to this chapter, Chapter 6.7 (commencing with Section 25280), or Division 7 (commencing with Section 13000) of the Water Code. The liability of a responsible party who is not an owner or operator shall be the full and total costs specified in subdivision (a).

(c) The amount of costs determined pursuant to this section shall be recoverable in a civil action. This section does not deprive a party of any defense the party may have.

(d) All money recovered by the Attorney General pursuant to this section shall be deposited in the fund.

(e) The amount of the costs constitutes a lien on the affected property upon service of a copy of the notice of lien on the owner and upon the recordation of a notice of lien, if the notice identifies the property on which the condition was abated, the amount of the lien, and the owner of record of the property, in the office of the county recorder of the county in which the property is located. Upon recordation, the lien shall have the same force, effect, and priority as a judgment lien, except that it attaches only to the property posted and described in the notice of lien, and shall continue for 10 years from the time of the recording of the notice, unless sooner released or otherwise discharged. Not later than 45 days from the date of receipt of a notice of lien, the owner may petition the court for an order releasing the property from the lien or reducing the amount of the lien. In that court action, the governmental agency that incurred the cleanup costs shall establish that the costs were reasonable and necessary. The lien may be foreclosed by an action brought by the board for a money judgment.

25299.72. Court joined action. Upon motion and sufficient showing by any party, the court shall join to the action any person who may be liable for costs or expenditures of the type recoverable pursuant to this article.

25299.73. Strict liability. The standard of liability for any costs of corrective action recoverable pursuant to this chapter is strict liability.

25299.74. Cost recovery; limitations. (a) No indemnification, hold harmless, conveyance, or similar agreement shall be effective to preclude any liability for costs recoverable under this article. This section does not bar any agreement to insure, hold harmless, or indemnify a party to the agreement for any costs under this chapter.

(b) The entry of judgment against any party to the action does not bar any future action by the fund against any person who is later discovered to be potentially liable for costs paid from the fund.

(c) Payment of any claim by the fund pursuant to this chapter shall be subject to the state acquiring by subrogation the rights of the claimant to recover those costs of corrective action for which it has compensated the claimant from the person responsible or liable for the unauthorized release.

25299.75. Liability; other provisions. (a) Except as provided in Sections 25299.70, 25299.72, and 25299.73, this chapter does not affect or modify the obligations or liability of any person under any other provision of state or federal law, including common law, for damages, injury, or loss resulting from an unauthorized release of petroleum or for corrective action or the costs of corrective action.

(b) This chapter shall not be construed as authorizing recovery for costs of corrective action resulting from any release authorized or permitted pursuant to state or federal law.

25299.76. Violations. (a) Any person who violates any requirement of Article 3 (commencing with Section 25299.30) or Article 4 (commencing with Section 25299.36) is liable for a civil penalty of not more than ten thousand dollars (\$10,000) for each underground storage tank for each day of violation.

(b) The state or a local agency may bring an action in superior court to impose the civil penalty specified in subdivision (a).

(c) The board or a regional board may impose the civil penalty specified in subdivision (a) pursuant to Article 2.5 (commencing with Section 13323) of Chapter 5 of Division 7 of the Water Code.

(d) In determining the amount of any liability imposed under this section, the superior court, the board, or the regional board shall take into account the nature, circumstances, extent, and gravity of the violation, and, with respect to the violator, the ability to pay, any prior history of violations, the degree of culpability, the economic benefits or savings, if any, resulting from the violations, and other matters as justice may require.

(e) Remedies under this section are in addition to, and do not supersede or limit, and other civil or criminal remedies, except that no civil penalties shall be recovered under this section for violations for which a civil penalty is recovered pursuant to Section 13268 or 13350 of the Water Code.

25299.77. Regulations: board shall adopt. (a) The board shall adopt regulations to implement this chapter. In adopting these regulations, the board shall ensure that the regulations are consistent with this chapter, Chapter 6.7 (commencing with Section 25280), and the requirements for state programs implementing the federal act.

(b) The adoption of any regulations pursuant to this section that are filed with the Office of Administrative Law on or before January 1, 1995, shall be deemed to be an emergency necessary for the immediate preservation of the public peace, health, safety, and general welfare. Notwithstanding Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code, any emergency regulation adopted by the board pursuant to this subdivision shall not be repealed by the Office of Administrative Law, and shall remain in effect until revised by the board.

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25299.78. **Authorized representative; authority.** (a) To carry out the purposes of this chapter, any authorized representative of the local agency, regional board, or board shall have the authority specified in Section 25185, with respect to any place where underground storage tanks are located, and in Section 25185.5, with respect to any real property which is within 2,000 feet of any place where underground storage tanks are located.

(b) An owner or operator shall furnish, under penalty of perjury, any information on fees imposed pursuant to Article 5 (commencing with Section 25299.40), financial responsibility, unauthorized releases, or corrective action as the local agency, regional board, or board may require.

25299.79. **Unrecoverable costs.** The costs specified in subdivision (d) of Section 25299.51 are not recoverable pursuant to this section.

Article 9. Sunset Provision

§ 25299.81. Sunset provision.

25299.81. **Sunset provision.** (a) Except as provided in subdivisions (b) and (c), this chapter shall remain in effect only until January 1, 2011, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2011, deletes or extends that date.

(b) Notwithstanding subdivision (a), Article 1 (commencing with Section 25299.10), Article 2 (commencing with Section 25299.11), and Article 4 (commencing with Section 25299.36) shall not be repealed and shall remain in effect on January 1, 2011.

(c) The repeal of certain portions of this chapter does not terminate any of the following rights, obligations, or authorities, or any provision necessary to carry out these rights and obligations:

(1) The filing and payment of claims against the fund, including the costs specified in subdivisions (c), (e), and (h) of Section 25299.51, and claims for commingled plumes, as specified in Article 11 (commencing with Section 25299.90), until the moneys in the fund are exhausted. Upon exhaustion of the fund, any remaining claims shall be invalid.

(2) The repayment of loans, outstanding as of January 1, 2011, due and payable to the board.

(3) The recovery of moneys reimbursed to a claimant to which the claimant is not entitled, or the resolution of any cost recovery action.

(4) The collection of unpaid fees that are imposed pursuant to Article 5 (commencing with Section 25299.40), as that article read on December 31, 2010, or have become due before January 1, 2011, including any interest or penalties that accrue before, on, or after January 1, 2011, associated with those unpaid fees.

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(d) The board shall continuously post and update on its Web site, but at a minimum, annually on or before September 30, information that describes the status of the fund and shall make recommendations, when appropriate, to improve the efficiency of the program.

Article 13. Drinking Water Treatment and Research

§ 25299.99. Fund expenditures. [Repealed.]

§ 25299.99.1. Fund expenditure.

§ 25299.99.2. Effective date.

§ 25299.99.3. Fund transfer.

Text of section operative to June 30, 1999

25299.99. **Fund expenditures.** (a) The board may annually expend up to five million dollars (\$5,000,000), upon appropriation by the Legislature, from the Underground Storage Tank Cleanup Fund created pursuant to Section 25299.50 for the purposes for which the State Department of Health Services may expend the money in the Drinking Water Treatment and Research Fund set forth in Section 116367 when a public drinking water well has been contaminated by an oxygenate and there is substantial evidence that a release has occurred from an underground storage tank.

(b) This section shall become inoperative on June 30, 1999, and, notwithstanding Section 25299.81, as of January 1, 2000, is repealed, unless a later enacted statute that is enacted before January 1, 2000, deletes or extends the dates on which it becomes inoperative and is repealed.

Text of section operative June 30, 1999

25299.99.1. **Fund expenditure.** (a) The board shall annually transfer five million dollars (\$5,000,000) from the Underground Storage Tank Cleanup Fund, created pursuant to Section 25299.50, to the Drinking Water Treatment and Research Fund created by Section 116367, to be expended for the purposes set forth in Section 116367 if a public drinking water well has been contaminated by an oxygenate and there is substantial evidence that the contamination was caused by a release from an underground storage tank.

(b) This section shall become operative June 30, 1999.

25299.99.2. **Effective date.** This article, notwithstanding Section 25299.81, shall remain in effect only until January 1, 2010, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 2010, deletes or extends that date.

25299.99.3. **Fund transfer.** In any fiscal year, if the department determines that less than two million dollars (\$2,000,000) of unencumbered funds remain in the fund, it shall notify the board and the board shall transfer five million dollars (\$5,000,000) from the Underground Storage Tank Cleanup Fund to the Drinking Water Treatment and Research Fund, to be

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expended for the purposes set forth in Section 116367, if a drinking water well has been contaminated with oxygenate and there is substantial evidence that the contamination was caused by a release from an underground storage tank.

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KEY TO ABBREVIATIONS

Gov . . . Government Code
H.S . . . Health and Safety Code
R.T . . . Revenue and Taxation Code

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